

EXHIBIT A

**CONSERVATION
EASEMENT**

DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT is entered into by and between the Isaac W. Bernheim Foundation, a Kentucky corporation, P. O. Box 130, Clermont, Kentucky 40110 (hereinafter "**GRANTOR**"), and the Commonwealth of Kentucky, by and through the Finance and Administration Cabinet, for the use and benefit of the Kentucky Heritage Land Conservation Fund Board (hereinafter "**GRANTEE**"), c/o Executive Director, Office of Kentucky Nature Preserves, 300 Sower Blvd, Frankfort, Kentucky 40601.

WITNESS THAT:

WHEREAS, **GRANTOR** is the owner in fee simple of certain real property located in Bullitt County, Kentucky (hereinafter the "Property"); more particularly described as follows:

Please see the attached Exhibit "A" and Exhibit "B" for a detailed description of the property.

Said tract being the same property conveyed to the **GRANTOR** by deeds dated October 15, 2018, and recorded in Deed Book 956, Page 606 and Deed Book 956, Page 600 in the Bullitt County Clerk's Office at Shepherdsville, Kentucky; and

WHEREAS, pursuant to KRS 382.850(1), **GRANTOR** states that it is not aware of any outstanding subsurface rights in the Property and will provide **GRANTEE** with a title insurance policy not containing any exceptions for such outstanding subsurface rights in the Property; and

WHEREAS, the Property's natural characteristics, ecological and aesthetic features, physical condition and conservation values are described and documented in a series of reports, drawings, and photographs hereinafter collectively referred to as "Baseline Documentation," consisting of the application package dated March 2017 and the project review committee's assessment of such package and located in the Office of Kentucky Nature Preserves, which the parties agree provides an accurate representation of the Property as of the date of this Easement; and

WHEREAS, the parties further agree that said Baseline Documentation is contained in the Application filed by **GRANTOR** in connection with this project, the preliminary resource management plan that **GRANTOR** has submitted, and the final resource management plan that **GRANTOR** will submit, as required; and

WHEREAS, while the Baseline Documentation may be used by **GRANTEE** to establish that a change in the use or character of the Property has occurred, its existence shall not preclude **GRANTEE** from using other evidence to establish the condition of the Property as of the date of this Easement; and

WHEREAS, pursuant to KRS 146.550 through 146.570, the Property was acquired in part with Kentucky Heritage Land Conservation Fund ("KHLCF") money; and

WHEREAS, KRS 146.570 mandates that lands acquired with KHLCF money be maintained in perpetuity for the purposes set out in KRS 146.560; and

WHEREAS, **GRANTOR** stated in its KHLCF application and preliminary resource management plan that the Property meets one or more of the priorities for acquisition contained in KRS 146.560(2), namely (a) natural areas that possess unique features such as habitat for rare and endangered species; (b) areas important to migratory

birds; (c) areas that perform important natural functions that are subject to alteration or loss; or (d) areas to be preserved in their natural state for public use, outdoor recreation and education, consistent with the purposes of KRS 146.550 through 146.570; and

WHEREAS, **GRANTEE** acknowledges that **GRANTOR** is a private, nonprofit land trust organization as defined in 418 KAR 1:010 Section 1 (17); and

WHEREAS, 418 KAR 1:050 Section 6(1)(a) requires land trust organizations to convey to the Commonwealth of Kentucky, simultaneously with the disbursement of KHLCF money, a conservation easement over all land acquired either in whole or in part with KHLCF money; and

WHEREAS, **GRANTEE** is a governmental body empowered to hold an interest in real property under the laws of the Commonwealth of Kentucky and the United States, and therefore qualifies as a holder pursuant to KRS 382.800; and

WHEREAS, both **GRANTOR** and **GRANTEE** desire the Property to be maintained in perpetuity for one or more of the purposes set out in KRS 146.560; and

WHEREAS, **GRANTOR** desires to grant to **GRANTEE**, and **GRANTEE** desires to accept, a conservation easement in gross in perpetuity on the Property;

NOW, THEREFORE, in consideration of SEVEN HUNDRED SIX THOUSAND FIVE HUNDRED DOLLARS (\$706,500), which is the amount of the KHLCF grant to **GRANTOR** used in part to acquire the Property, including administrative expenses authorized by 418 KAR 1:010 Section 1(2), and FURTHER pursuant to KRS 382.800 through 382.860, **GRANTOR** does hereby convey to **GRANTEE**, its successors and assigns forever, in consideration of the benefit to the people of the Commonwealth of Kentucky, with special warranty of title, a Conservation Easement (hereinafter

"Easement") in perpetuity over the Property, subject to the following conditions, limitations, and affirmative obligations. **GRANTOR** covenants that it is lawfully seized of the interest hereby conveyed and that it has full right and power to convey same.

I. PURPOSES OF THE EASEMENT

A. **GRANTOR** shall use and manage the Property in strict accordance with:

- (1) The requirements of KRS Chapter 146.550 through 146.570;
- (2) 418 KAR Chapter 1;
- (3) KRS 382.800 through 382.860;
- (4) The 2017 grant application submitted to **GRANTEE** by **GRANTOR** and approved by the Kentucky Heritage Land Conservation Fund Board ("KHLCFB") at its regularly scheduled meeting in May, 2017;
- (5) The most current resource management plan pertaining to the Property which have been and will be submitted to and approved by **GRANTEE**.

B. **GRANTEE** has the right to view the Property in its natural, scenic, open and undisturbed condition.

C. **GRANTEE** has the right to enter the Property, after advance notice to **GRANTOR**, in a reasonable manner and at reasonable times, for the purpose of inspecting same to determine compliance with this Easement and the Baseline Documentation, to determine if **GRANTOR** is in compliance with the terms of this Easement, to obtain evidence for the purpose of seeking enforcement of this Easement, or with **GRANTOR**'s approval, to perform ecological monitoring and/or, upon **GRANTOR**'s default in performance under the then current resource management plan, actively manage the Property to effectuate the purposes of this Easement.

D. It is the purpose of this Easement to conserve and help ensure the continuation of the conservation values of the Property. **GRANTOR** and **GRANTEE** recognize the conservation values of the Property, and share the common vision and purpose of conserving these values by conveying conservation restrictions and of preventing the use or development of the Property for any purpose or in any manner that conflicts with these conservation values. **GRANTEE** accepts such conservation restrictions and development rights in order to conserve these values for present and future generations.

II. RESTRICTED USES OF PROPERTY

Any activity on or use of the Property that is or may become inconsistent with the purposes of this Easement, the Baseline Documentation, or KRS 146.550 through 146.570 is prohibited. Without limiting the generality of the foregoing, the following restrictions are imposed upon the Property, and the following obligations are imposed on **GRANTOR**:

A. Public Visitor Activity. There shall be no public visitor activities at the Property except as specifically authorized and described in the then current resource management plan, and except for scientific research approved by **GRANTOR** and **GRANTEE**, as referred to in subparagraph K of this Section. These activities shall be monitored by **GRANTOR** in order to prevent disturbance of the Property beyond what it can tolerate without deterioration and impairment of natural conditions. Activities and uses that are unrelated to purposes articulated in the application and the most recent resource management plan are prohibited except as may be expressly permitted by **GRANTOR** in order to carry out the primary purposes of this Easement.

Prohibited public visitor activities include: games and sports, use of motorized vehicles (except for vehicles driven to and from designated parking areas on the Property and approved to manage the property), mountain bikes, camping, the removal, disturbance or defacement of minerals, archeological features or other natural features, and any disturbance or gathering of plants or animals, or plant or animal products. Hunting (except as permitted in paragraph H below), trapping, or collecting anything from the Property is prohibited.

Except for trained service animals to assist an individual with a disability, no animals shall be brought onto the Property without the prior written permission of **GRANTOR** and **GRANTEE**.

There shall be no fires, except as expressly provided in Subsection B below or expressly permitted in writing by **GRANTOR**.

B. Fire. Prescribed fire may be utilized by **GRANTOR** as a management tool in such areas or situations where fire is needed to maintain or protect biological communities on the Property that can be demonstrated to be fire-maintained communities.

C. Water Level Control. The Property shall be managed by **GRANTOR** in accordance with the purposes set out in the then current resource management plan, or otherwise to maintain its natural water regime. Water levels that previously have been altered by human activity may be changed by **GRANTOR**.

D. Disturbance of Natural Features. Any disturbance or alteration of the Property and its natural conditions through the removal of vegetation, flora, fauna, soil, rocks, or other components is prohibited unless it is consistent with this Easement and expressly permitted in writing by **GRANTOR** and **GRANTEE**.

E. Erosion Control and Pollution Control. Erosion and soil deposition or other pollution caused by human activity or natural conditions originating within or outside the Property may be controlled by **GRANTOR** as necessary.

F. Control of Succession. Control of natural succession may be undertaken in a manner approved by **GRANTOR** if necessary to maintain or restore ecosystems naturally occurring on the Property or to preserve threatened, rare, endangered, or uncommon native species.

G. Control of Exotic Species. Control of exotic species, if they exist on the Property, may be undertaken in a manner approved by **GRANTOR** and **GRANTEE**. **GRANTOR** should use its best efforts to eradicate exotic species from the Property if it can be done without undue disturbance of natural conditions that may otherwise exist. No invasive non-native plant or animal species may be introduced into the Property. **GRANTOR** and **GRANTEE** shall determine whether a non-native species is invasive or whether it would have adverse effects on the Property.

H. Control of Populations. **GRANTOR** shall use its best efforts to control wildlife populations on the Property in order to correct those situations where wildlife populations have been documented as significantly affecting natural conditions. Any measures taken for population control, including regulated hunting by **GRANTOR** or its designees, shall be submitted to **GRANTEE** in the form of a written plan, and no control measures may be undertaken without the written approval of **GRANTOR** and **GRANTEE**.

I. Restoration and Management of Threatened or Endangered Species. **GRANTOR** may actively manage the Property for the preservation and protection of

threatened, rare, endangered, or uncommon native species, if they exist on the Property. Active management may include, but need not be limited to, such activities as mechanical thinning of woody species, the use of herbicides, and prescribed burning. Restoration of native species shall be performed with caution and based on scientific evidence documenting the species' historical occurrence on the Property. Because the Property was acquired in part with funds from the Indiana Bat Conservation Fund for enhancing habitat for the Indiana bat, *Myotis sodalis*, and Northern long-eared bat, *Myotis septentrionalis*, any forests existing or subsequently established on the Property shall remain in a forested condition.

J. Use Tolerance. **GRANTOR** shall from time to time determine the proper use-tolerance or durability of all or any portion of the Property and specify the corrective steps to be taken if overuse occurs that may, in **GRANTOR's** opinion, impair natural conditions.

K. Research and Collecting Permits. Anyone wishing to engage in scientific research on the Property shall first submit to **GRANTOR** a written research proposal, and then secure, at **GRANTOR's** discretion, a written permit. Collecting anything on the Property is prohibited without first obtaining at **GRANTOR's** discretion, a written permit from **GRANTOR**, and **GRANTOR** should develop guidelines for research and collection of living and non-living things. These guidelines may include written proposals, collecting permits, and field experiments.

L. Boundary Markers. Boundaries on the Property shall be made clearly evident by **GRANTOR** by placing markers or boundary signs in a conspicuous manner at corners and/or other strategic locations.

M. Fences. Fences and barriers may be installed by **GRANTOR** as necessary to further the purposes of this Easement. Fences and barriers shall not be in a form that will have a detrimental effect on the movement of wildlife or other natural objects.

N. Trails. **GRANTOR** and **GRANTEE** shall determine the location and specification of any trails other than natural wildlife paths. Such trails shall be adequate to provide for permitted use of the Property, but otherwise shall be kept to a minimum. The use of paving materials, footbridges, and elevated walks may be provided for in the then current research management plan.

O. Other Structures and Improvements. Structures or facilities shall not be erected on the Property unless deemed necessary to provide Environmental Education Programs or to mitigate safety concerns, and unless **GRANTOR** and **GRANTEE** first agree in writing to the structures.

P. Subdivision. Subdividing or partitioning the Property, using any process, is strictly prohibited.

Q. Rights of Way. The granting of rights-of-way through the Property for the installation, transporting, or use of lines, towers and equipment, for water, sewage, electricity, telephone, telecommunications, gas, natural gas liquids, oil or oil products is strictly prohibited, except as necessary for **GRANTOR** to provide running water and electricity for public restrooms on the Property, with the prior written consent of **GRANTEE**.

R. Grantor's Retained Rights. **GRANTOR** and its successors in interest retain the right to perform any act not specifically prohibited or limited by this Section, provided it does not violate the purpose of this Easement. These ownership rights include but are

not limited to the right to exclude any member of the public from entering the Property and the right to sell or otherwise transfer the Property to anyone of **GRANTOR**'s choice, with **GRANTEE**'s prior approval.

S. Exceptions: Notwithstanding Sections O, P, and Q, other structures or development may be approved by **GRANTOR** and **GRANTEE** on the 38.47 acres identified as Parcel 3 in DB 725, pg 280 to conform to restrictions found on said deed. In that event, **GRANTOR** will reimburse **GRANTEE** the then current appraised amount for those 38.47 acres.

III. INDEMNIFICATION; TAXES

Indemnification. **GRANTOR** does hereby agree to pay, protect, indemnify, hold harmless and defend at its own cost and expense, **GRANTEE** and its agents, employees and representatives, from and against any and all claims, liabilities, expenses, costs, damages, losses, and expenditures (including reasonable attorneys' fees and disbursements hereafter incurred) arising from, of, or in connection with injury to or death of any persons caused by **GRANTOR**; physical damage to the Property caused by **GRANTOR**; the presence or release in, on or about the Property at any time, of any substance brought onto the Property by **GRANTOR** now or hereafter defined, listed or otherwise classified pursuant to any law, ordinance, or regulation as a hazardous, toxic, polluting substance; or other injury or other damage occurring on or about the Property caused by **GRANTOR**.

Taxes. **GRANTOR** shall pay immediately, when first due and owing, all general taxes, special taxes, special assessments, water charges, sewer service charges, and other charges which may become a lien on the Property unless **GRANTOR** objects timely to the amount or validity of the assessment or charge and diligently prosecutes an appeal thereof,

in which case the obligation hereunder to pay such charges shall be suspended for the period permitted by law for prosecuting such appeal and any applicable grace period following completion of such action.

IV. ADMINISTRATION AND ENFORCEMENT

Written Notice. Any notice that either **GRANTOR** or **GRANTEE** may want or need to give to the other shall be in writing and shall be delivered by either first-class postage or hand-delivery; if to **GRANTOR**, then to its Executive Director and the President of its Board of Trustees, P. O. Box 130, Clermont, Kentucky 40110; and if to **GRANTEE**, then to Kentucky Heritage Land Conservation Fund Board, c/o Office of Kentucky Nature Preserves, 300 Sower Blvd, Frankfort, KY 40601. Either party may change its mailing address by written notice to the other party.

Grantee's Remedies. In the event of a violation of any term, condition, covenant, or restriction contained in this Easement, **GRANTEE** may immediately enforce any of the remedies set forth in 418 KAR 1:070 or any other remedies available by law. Any failure by **GRANTEE** to avail itself of these remedies shall not be deemed a waiver or forfeiture of the right to enforce any term, condition, covenant or purpose of this Easement. **GRANTEE** may, following reasonable-notice to **GRANTOR**, institute suit to enjoin any violation of the terms of this Easement, including injunctive relief. Except when an ongoing or imminent violation could irreversibly diminish or impair the conservation values of the Property, **GRANTEE** shall give **GRANTOR** notice of the violation and sixty (60) days to correct it before taking legal action. **GRANTEE** shall also have available all legal and equitable remedies to enforce **GRANTOR's** obligations under this Easement. If **GRANTOR** is found in violation of any of its obligations, **GRANTOR** shall bear all costs

associated with correcting the violation, including costs of work required and materials used to correct the violation and restore the restricted land to its condition prior to the violation; administrative costs incurred by **GRANTEE**, and court costs and reasonable attorneys' fees incurred by **GRANTEE** in enforcing the Easement; provided, however, **GRANTOR**, in lieu of paying any of the costs set forth in this sentence, may elect to forfeit and transfer the Property to **GRANTEE** or an appropriate land management entity designated by **GRANTEE** as described in the Remedies section of 418 KAR 1:070 Section 2(1) and (2).

The rights herein granted shall be in addition to, and not in limitation of, any other rights and remedies available to **GRANTEE** for protection of the Property. Exercise by **GRANTEE** of one remedy hereunder shall not have the effect of waiving the use of any other remedy at any other time.

Notice from Government Authorities. **GRANTOR** shall deliver to **GRANTEE** copies of any notice of violation or lien relating to the Property received by **GRANTOR** from any state or federal authority within five (5) days of receipt by **GRANTOR**.

Notice of Proposed Sale. In addition to the requirements set forth in the Baseline Documentation, Memorandum of Agreement, and 418 KAR Chapter 1, **GRANTOR** shall promptly notify **GRANTEE** in writing of any proposed sale of the Property and provide the opportunity for **GRANTEE** to explain the terms of the Easement to potential new owners. Additionally, **GRANTOR** agrees that the terms, conditions, restrictions and purposes of this Easement will either be referenced or inserted by **GRANTOR** in any subsequent deed or other legal instrument by which **GRANTOR** divests itself of any interest in the Property.

V. BINDING EFFECT; ASSIGNMENT

Runs with the Land. The obligations imposed herein shall be a burden upon and shall run with the Property and shall bind **GRANTOR**, its successors and assigns in perpetuity. This Easement shall extend to and be binding upon **GRANTOR** and **GRANTEE**, their respective successors in interest and all persons hereafter claiming under or through **GRANTOR** and **GRANTEE**. Any right, title or interest herein granted to **GRANTEE** also shall be deemed granted to each successor in interest of **GRANTEE** and the word "**GRANTEE**" shall include all such successors and assigns.

Assignment. With the written approval of **GRANTOR**, **GRANTEE** may convey, assign, or transfer this Easement to a unit of federal, state or local government or similar local, state, or national entity that is a "qualified holder" under KRS 382.850(1) and whose purposes include promoting the preservation or conservation of natural resources; provided, however, that any such conveyance, assignment or transfer requires that the purposes for which this Easement was granted will continue to be carried out.

Extinguishment. **GRANTOR** agrees that this conveyance of a perpetual Easement gives rise to a property right, immediately vested in **GRANTEE**, with a fair market value that is at least equal to the proportionate value that the Easement, at the time of this conveyance, bears to the value of the Property as a whole at that time. The proportionate value of **GRANTEE**'s property rights shall remain constant.

Recording and Effective Date. **GRANTEE** shall ensure that all acts necessary for the prompt recording of this Easement in the land records of Bullitt County, Kentucky, shall be accomplished. **GRANTOR** and **GRANTEE** intend that this Easement and the

restrictions arising hereunder shall take effect on the day of execution by **GRANTOR** and **GRANTEE**.

VI. INTERPRETATION

Interpretation. This Easement shall be interpreted under the laws of the Commonwealth of Kentucky. The invalidity or unenforceability of any provision of this Easement shall not affect the validity or enforceability of any other provision of this Easement or any ancillary or supplementary agreement relating to the subject thereof.

Any legal action brought to enforce the terms of this Easement shall be filed in the Franklin Circuit Court, Frankfort, Kentucky.

VII. AMENDMENT

If circumstances arise under which an amendment to or modification of this Easement is appropriate or necessary, **GRANTOR** and **GRANTEE** may by mutual written agreement jointly amend this Easement, provided that no amendment shall be made that will adversely affect the qualification of this Easement or the status of **GRANTEE** under any applicable federal or state laws. Any such amendment shall be consistent with the protection of the conservation and preservation values of the Property and the purposes of this Easement, shall not affect its perpetual duration, shall not permit any private inurement to any person or entity, and shall not provide any less protection to the conservation values protected by this Easement. Any such amendment shall be recorded in the land records of Bullitt County, Kentucky. Nothing in this paragraph shall require **GRANTOR** or **GRANTEE** to agree to any amendment or to consult or negotiate regarding any amendment.

THIS EASEMENT reflects the entire agreement of **GRANTOR** and **GRANTEE** regarding the terms of any conservation easement pertaining to the Property. Any prior or simultaneous correspondence, understandings, agreements and representations are null and void upon execution hereof, unless set out in this Easement.

TO HAVE AND TO HOLD this Conservation Easement, together with all appurtenances and privileges belonging or in any way pertaining thereto, either in law or in equity, for the use and benefit of **GRANTEE**, its successors and assigns, forever.

IN WITNESS WHEREOF, Isaac W. Bernheim Foundation, **GRANTOR**, has executed this Deed of Conservation Easement this the 15th day of Oct, 2018.

GRANTOR:

ISAAC W. BERNHEIM FOUNDATION,
a Kentucky corporation

By: Mark K. Worms

Title: Executive Director

CERTIFICATE OF CONSIDERATION

I, Mark K. Worms, acting for and on behalf of the Isaac W. Bernheim Foundation, **GRANTOR**, do hereby certify, pursuant to KRS Chapter 382, that the above-stated consideration is the true, correct and full consideration paid for the property herein conveyed.

GRANTOR:

ISAAC W. BERNHEIM FOUNDATION,
a Kentucky corporation

By: Mark K. Warrms

Title: Executive Director

CERTIFICATE OF ACKNOWLEDGMENT

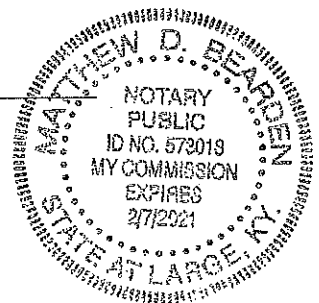
STATE OF KENTUCKY
COUNTY OF BULLITT

I, the undersigned, a notary public duly authorized in the county and state aforesaid, do hereby certify that on this day Mark K. Warrms personally appeared before me and executed the foregoing instrument as Executive Director of Isaac W. Bernheim Foundation, a Kentucky corporation, and acknowledged before me that Mark K. Warrms executed the same as such officer in the name of and for and on behalf of said entity.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this the 15th day of Oct., 2018.

[Signature]
NOTARY PUBLIC

My Commission Expires: 2/7/21



IN WITNESS WHEREOF, the Commonwealth of Kentucky, **GRANTEE**, hereby accepts this Deed of Conservation Easement this the 2nd day of October, 2018.

GRANTEE:

FINANCE AND ADMINISTRATION
CABINET

By: William M. Landrum III
William M. Landrum III, Secretary

CERTIFICATE OF CONSIDERATION

I, William H. Landrum, acting on behalf of the Commonwealth of Kentucky, **GRANTEE**, do hereby certify, pursuant to KRS Chapter 382, that the above-stated consideration is the true, correct and full consideration paid for the property herein conveyed.

GRANTEE:

FINANCE AND ADMINISTRATION
CABINET

By: William M. Landrum III
William M. Landrum III, Secretary

CERTIFICATE OF ACKNOWLEDGMENT

STATE OF KENTUCKY
COUNTY OF FRANKLIN

I, the undersigned, a notary public duly authorized in the county and state aforesaid, do hereby certify that on this day William M. Landrum III personally appeared before me and executed the foregoing instrument as Secretary of the Commonwealth of Kentucky, Finance and Administration Cabinet, and acknowledged before me that he executed the same as such officer in the name of and for and on behalf of said entity.

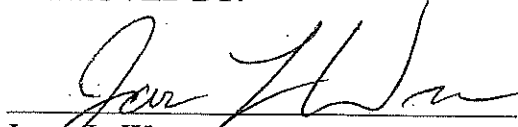
IN WITNESS WHEREOF, I have hereunto set my hand and official seal this the 2 day of October, 2018.


NOTARY PUBLIC

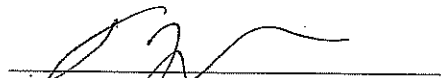
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My Commission Expires: 10-5-2019

APPROVED BY:


Jason L. Weese
Chairman
KENTUCKY HERITAGE LAND
CONSERVATION FUND BOARD

THIS INSTRUMENT PREPARED BY:


Timothy J. Mayer, Attorney
Office of Legal Services
Energy and Environment Cabinet
300 Sower Blvd
Frankfort, Kentucky 40601

APPROVED TO FORM AND LEGALITY:



Attorney
Finance and Administration Cabinet

Exhibit "A"

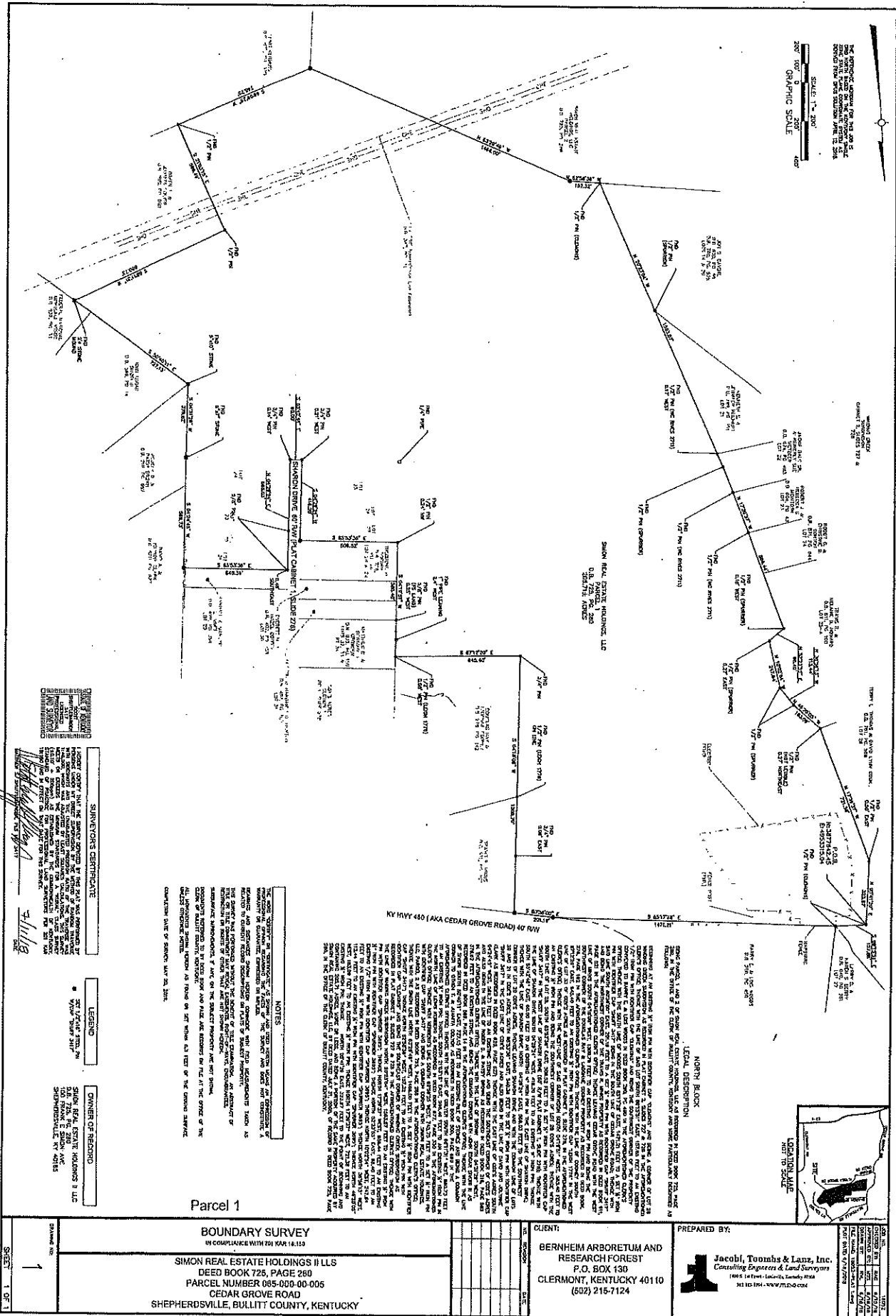


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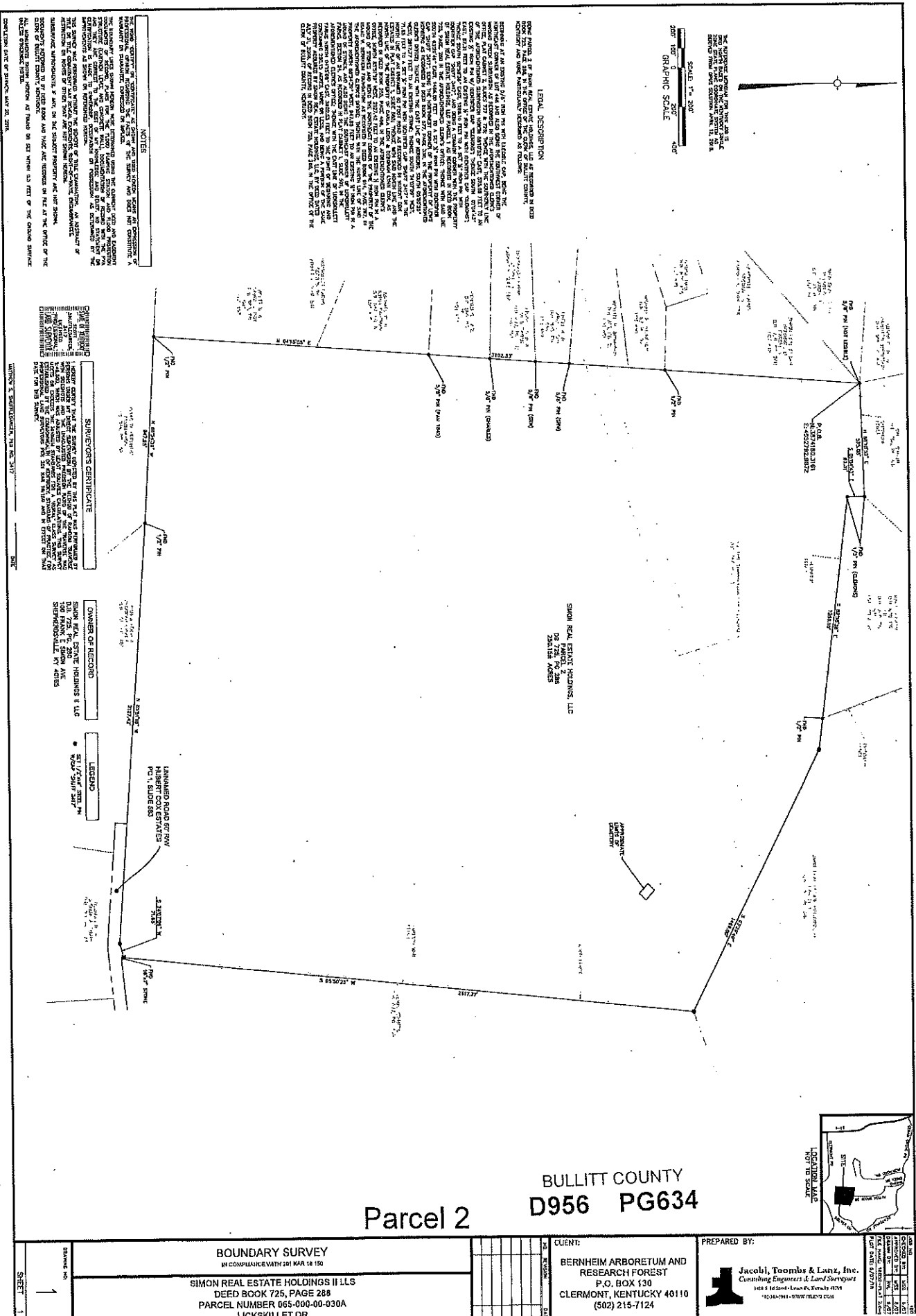
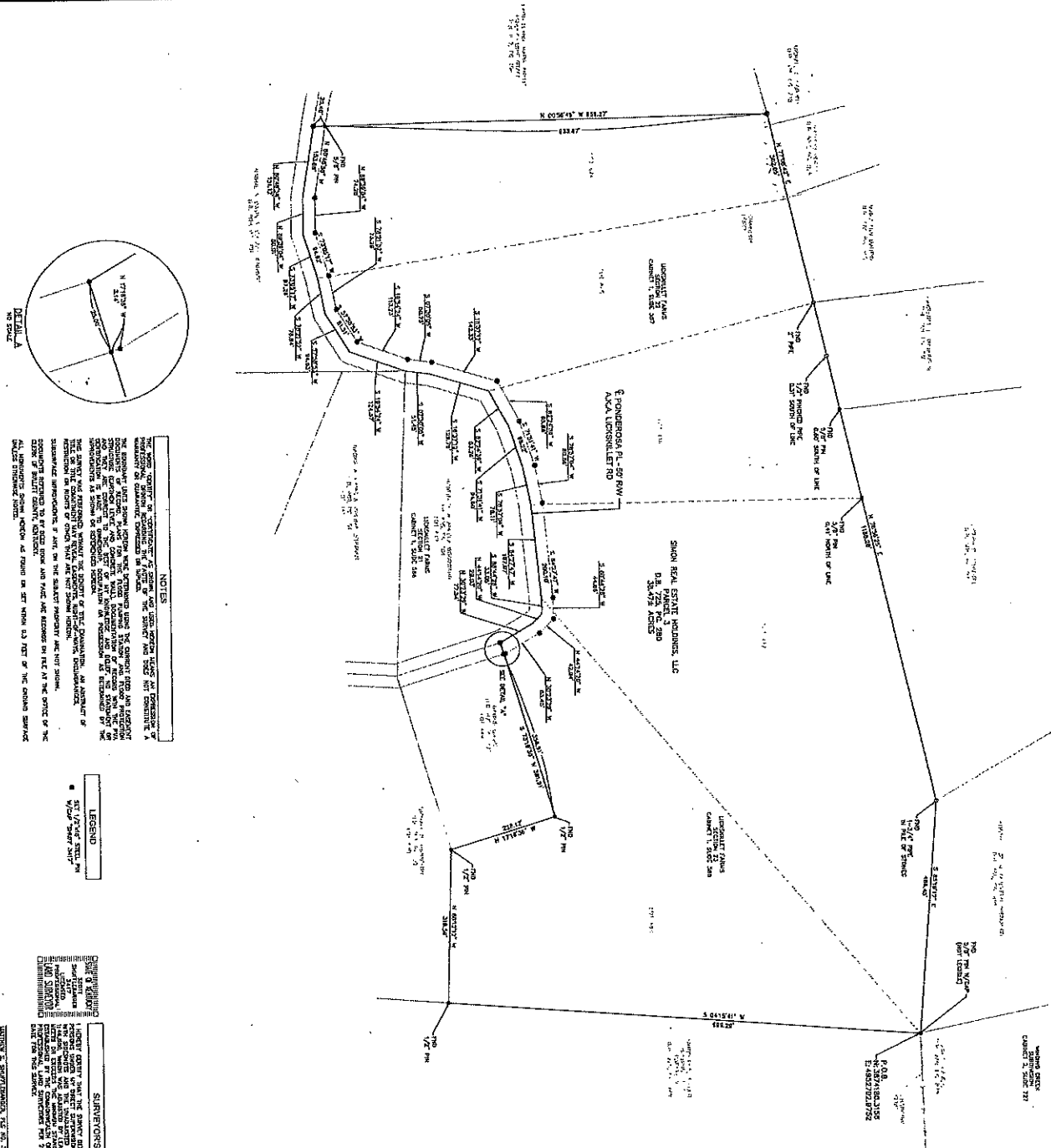


Exhibit "A"



NOTES:

1. THE SURVEY WAS MADE BY THE SURVEYOR IN THE FIELD AND THE RESULTS ARE SHOWN ON THIS MAP.
2. THE SURVEY WAS MADE IN ACCORDANCE WITH THE KENTUCKY SURVEYING ACT OF 1978.
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LEGEND:

- 1. SURVEY LINE
- 2. BOUNDARY LINE
- 3. ADJACENT OWNER
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- 99. ADJACENT OWNER
- 100. SURVEY POINT

OWNER OF RECORD:

SIMON REAL ESTATE HOLDINGS II LLC
DEED BOOK 725, PAGE 280
LICKSKILLET DR
SHEPHERDSVILLE, BULLITT COUNTY, KENTUCKY

PARCEL NUMBERS:

056-SE-05-005
056-SE-05-006
056-SE-05-007
056-SE-05-008

BOUNDARY SURVEY
IN COMPLIANCE WITH 201 KAR 18.12

CLIENT:
BERNHEIM ARBORETUM AND RESEARCH FOREST
P.O. BOX 130
CLERMONT, KENTUCKY 40110
(502) 215-7124

PREPARED BY:
Jacob, Toombs & Lanz, Inc.
Consulting Engineers & Land Surveyors
1501 E. 1st Street, Louisville, Kentucky 40202
(502) 451-1111

DATE:
JAN 15, 2015

DRAWN BY:
JAN 15, 2015

SCALE:
1" = 100'

GRAPHIC SCALE:
0 50 100 200

LOCATION MAP:
A small map showing the location of the survey area within Bullitt County, Kentucky.

EXHIBIT "B"

NORTH BLOCK

Being Parcel 1 and 2 of Simon Real Estate Holdings, LLC as recorded in Deed Book 725, Page 280, in the Office of the Clerk of Bullitt County, Kentucky and more particularly described as follows:

BEGINNING at an existing $\frac{1}{2}$ " iron pin with identifier cap "CLEMONS" and being a corner of Lot 26 Winding Creek Subdivision as recorded in Plat Cabinet 2, Slide 728 in the aforementioned clerk's office; thence with the line of said lot South $89^{\circ}15'51"$ East, 157.88 feet to an existing $\frac{1}{2}$ " iron pin with identifier cap "CLEMONS" and being the Southwest corner of the property conveyed to Barry E. & Lois Woods in Deed Book 290, PG 490 in the aforementioned clerk's office; thence with the South line of Woods South $85^{\circ}17'28"$ East, 1471.21 feet to a set $\frac{1}{2}$ " iron pin with identifier cap "SHUFF 3417" being in the South line of Cedar Grove Road; thence with said line South $80^{\circ}36'00"$ East, 201.19 feet to a set $\frac{1}{2}$ " iron pin with identifier cap "SHUFF 3417" and being the Northwest corner of the Travis R. Minks property as recorded in Deed Book 911, Page 521 in the aforementioned clerk's office; thence leaving Cedar Grove Road with the West line of Minks South $04^{\circ}18'06"$ West, 1309.79 feet to an existing $\frac{3}{4}$ " iron pin with T-Post and being the Southwest corner of the Douglas Ray & Ladonne Cooney property as recorded in Deed Book, 278, Page 162 in the aforementioned clerk's office; thence with the line of Cooney South $87^{\circ}12'20"$ East, 645.40 feet to an existing $\frac{1}{2}$ " iron pin with identifier cap "LEIGH 1776" in the West line of Lot 33 of Cox's Acres as recorded in Plat Cabinet 1, Slide 278, in the aforementioned clerk's office; thence with the West line of said subdivision South $04^{\circ}19'51"$ West, 585.40 feet to an existing $\frac{1}{2}$ " iron pin and being the Southwest corner of Lot 28 Cox's Acres; thence with the South line of Lot 28, South $85^{\circ}53'36"$ East, 506.52 feet to a set $\frac{1}{2}$ " iron pin with identifier cap "SHUFF 3417" in the West line of Sharon Drive; thence with the line of Sharon Drive South $04^{\circ}29'24"$ West, 416.20 feet to an existing $\frac{3}{4}$ " iron pin; thence South $85^{\circ}42'46"$ East, 60.00 feet to an existing $\frac{3}{4}$ " iron pin in the East line of Sharon Drive; thence with the line of Sharon Drive North $04^{\circ}29'24"$ East, 568.03 feet to the Southwest corner of Lot 20 Cox's Acres; thence leaving Sharon Drive and with the common line of lots 20 and 21 in Cox's Acres, South $85^{\circ}53'36"$ East, 540.36 feet to set $\frac{1}{2}$ " iron pin with identifier cap "SHUFF 3417" in the East line of Cox's Acres and also being in the line of David and Jolynne Clark as recorded in Deed Book 620, Page 627; thence with the East line of Cox's Acres South $04^{\circ}24'45"$ West, 569.73 feet to an existing stone and being the Southeast corner of Cox's Acres and also being in the line of Roger D. & Patsy Brown as recorded in Deed Book 216, Page 582 in the aforementioned clerk's office; thence with the line of Brown South $04^{\circ}31'29"$ West, 376.62 feet to an existing stone and being the common corner with John Edgar Sivori III as recorded in Deed Book 569, Page 14 in the aforementioned clerk's office; thence with the line of Sivori South $50^{\circ}40'11"$ East, 727.15 feet to an existing pile of stones and being a common corner to Othen T. & Juanita Colyer as recorded in Deed Book 500, Page 660 in the aforementioned clerk's office; thence with the line of Colyer South $68^{\circ}11'31"$ West, 860.73 feet to an existing $\frac{1}{2}$ " iron pin; thence South $21^{\circ}03'15"$ East, 598.49 feet to an existing $\frac{1}{2}$ " iron pin in the North line of Lewis Kerberg as recorded in Deed Book 877, Page 330 in the aforementioned clerk's office; thence with Kerberg's line South $69^{\circ}59'25"$ West, 745.75 feet to a set $\frac{1}{2}$ " iron pin with identifier cap "SHUFF 3417" and being a common corner with Simon Real Estate Holdings, LLC, Parcel 2 as recorded in Deed Book 725, Page 288 in the aforementioned clerk's office; thence with the Simon line North $63^{\circ}29'49"$ West, 1466.00 feet to a set $\frac{1}{2}$ " iron pin with identifier cap "SHUFF 3417"; thence North $82^{\circ}58'36"$ West, 157.32 feet to an

existing ½" iron pin with identifier cap "CLEMONS" and being the Southeast corner of Winding Creek Subdivision as recorded in Plat Cabinet 2, Slides 727 & 728 in the aforementioned clerk's office; thence with the line of winding Creek Subdivision North 20°23'04" West, 1593.87 feet to an existing ½" iron pin with identifier cap "SPURRIER 3695"; thence North 17°39'37" West, 886.44 feet to an existing ½" iron pin with identifier cap "SPURRIER 3695"; thence North 52°23'55" East, 98.40 feet to an existing 1/2" iron pin with identifier cap "SPURRIER 3695"; thence North 10°02'54" West, 247.64 feet to an existing ½" iron pin with identifier cap "SPURRIER 3695"; thence North 36°56'13" West, 113.44 feet to an existing ½" iron pin with identifier cap "SPURRIER 3695"; thence North 46°20'05" West, 183.09 feet to an existing ½" iron pin; thence North 17°39'37" West, 721.38 feet to an existing ½" iron pin; thence North 05°41'29 East, 323.97 feet to the point of beginning and containing 205.71 acres, more or less, and being a portion of the same property acquired by Simon Real Estate Holdings, LLC, by Deed dated July 31, 2008, of record in Deed Book 725, Page 280, in the Office of the Clerk of Bullitt County, Kentucky.

EXHIBIT "B"

Being PARCEL TWO of Simon Real Estate Holdings, LLC as recorded in Deed Book 725, Page 288, in the Office of the Clerk of Bullitt County, Kentucky and more particularly described as follows:

BEGINNING at an existing 5/8" iron pin with illegible cap, being the northeast corner of lot 448 and also being the southwest corner of Winding Creek Subdivision as recorded in the aforementioned clerk's office, Plat Cabinet 2, Slides 727 & 728; thence with the southerly line of the aforementioned subdivision North 88°10'52" East, 575.08 feet to an existing 1/2" iron pin w/ identifier cap "CLEMONS"; thence South 01°04'43" East, 87.31 feet to an existing 1/2" iron pin with identifier cap "CLEMONS"; thence South 82°58'36" East, 1288.10 feet to a set 1/2" iron pin with identifier cap "SHUFF 3417", and being a common corner with the property of Simon Real Estate Holdings, LLC Parcel 1 as recorded in Deed Book 725, Page, 280 in the aforementioned clerk's office; thence with said line South 63°29'49" East, 1466.00 feet to a set 1/2" iron pin with identifier cap "SHUFF 3417", being the Northwest Corner of the property of Lewis Kerberg as recorded in Deed Book 877, Page 330, in the aforementioned clerk's office; thence with the East line of Kerberg, South 05°50'25" West, 2917.77 feet to an existing stone; thence South 74°07'09" West, 71.65 feet to a set 1/2" iron pin with identifier cap "SHUFF 3417" in the North line of an unnamed 60 foot road as recorded in Hubert Cox Estates in Plat Cabinet 1, Slide 583; thence with said north line and the north line of the property of Carla Leigh & Deborah Lynn Cox, as recorded in Deed Book 255, Page 486, in the aforementioned clerk's office, North 85°51'19" West, 2127.42 feet to an existing 1/2" iron pin in a mound of stones and being the Northeast corner of the property of the Isaac W. Bernheim Foundation as recorded in Deed Book 914, Page 767, in the aforementioned clerk's office; thence with the North line of said property North 86°34'39" West, 947.95 feet to an existing 1/2" iron pin in a mound of stones, and also being the Southeast corner of Licksillet Farms, Section 24, as recorded in Plat Cabinet 1, Slide 591, in the aforementioned clerk's office; thence with the East line of Licksillet Farms North 04°15'08" East, 3602.53 feet to the point of beginning and containing 250.15 acres, more or less, and being a portion of the same property acquired by Simon Real Estate Holdings, LLC, by Deed dated July 31, 2008, of record in Deed Book 725, Page 288, in the Office of the Clerk of Bullitt County, Kentucky.

EXHIBIT "B"

PARCEL THREE:

Being PARCEL THREE of Simon Real Estate Holdings, LLC as recorded in Deed Book 725, Page 280, in the Office of the Clerk of Bullitt County, Kentucky and more particularly described as follows:

BEGINNING at an existing 5/8" iron pin with illegible cap, being the northeast corner of lot 448 Lickskillet Farms, Section 23 as recorded in Plat Cabinet 1, Slide 588 and also being the southwest corner of Winding Creek Subdivision as recorded in the aforementioned clerk's office, Plat Cabinet 2, Slides 727 & 728; thence with the easterly line of Lickskillet Farms Section 23, South 04°15'41" West, 999.29 feet to an existing 1/2" iron pin and being the Northeast corner of Lot 450 Lickskillet Farms Section 23; thence with the North line of Lot 450, North 88°12'12" West, 319.59 feet to an existing 1/2" iron pin and being the southeast corner of lot 449 Lickskillet Farms Section 23; thence with the East line of Lot 449, North 17°16'36" West, 228.12 feet to an existing 1/2" iron pin; thence with the North line of Lot 449, South 73°19'38" West, 381.91 feet to a set 1/2" iron pin with cap "SHUFF 3417" in the centerline of Lickskillet Farms Road, a 50' right of way; thence with said centerline North 30°23'29" West, 77.54 feet; thence North 44°14'20" West, 29.03 feet; thence South 88°44'28" West, 33.05 feet; thence South 84°24'47" West 197.96 feet; thence South 78°57'04" West, 78.11 feet; thence South 71°51'41", 94.60 feet; thence South 62°24'39", 83.26 feet; thence South 16°37'12" West, 129.78 feet; thence South 07°30'05" West, 51.45 feet; thence North 19°54'24" West, 124.57 feet; thence South 57°58'53" West, 94.63 feet; thence South 78°21'52" West, 76.64 feet; thence South 73°05'17" West, 97.26 feet; thence North 89°39'04" West, 80.01 feet; thence North 80°48'58" West, 151.12 feet to a set 1/2" iron pin with cap "SHUFF 3417", also being the Southwest corner of Lot 444 Lickskillet Farms Section 22 as recorded in Plat Cabinet 1, Slide 587 in the aforementioned clerk's office; thence with the west line of Lot 444 North 00°56'49" West, 959.27 feet, to the North line of Lickskillet Farms Section 22; thence with the north line of Lickskillet Farms Sections 22, North 77°08'42" East 302.05 feet, to an existing 2" iron pipe; thence North 76°56'25" East, 1188.28 feet to an existing 1 3/4" iron pipe in a mound of stones; thence South 85°19'17" East, 486.45 feet to the point of beginning and containing 38.47 acres, more or less, and being a portion of the same property acquired by Simon Real Estate Holdings, LLC, by Deed dated July 31, 2008, of record in Deed Book 725, Page 280, in the Office of the Clerk of Bullitt County, Kentucky.

EXHIBIT B

DEED I

GENERAL WARRANTY DEED

Oct. 15 THIS GENERAL WARRANTY DEED is made and entered into as of _____, 2018, from

SIMON REAL ESTATE HOLDINGS, LLC,
a Kentucky limited liability company
6009 Brownsboro Park Blvd., Suite H
Louisville, Kentucky 40207

("Grantor")

to

ISAAC W. BERNHEIM FOUNDATION,
a Kentucky corporation
2499 Clermont Road
Clermont, Kentucky 40110

("Grantee").

WITNESSETH

For a total consideration of SIX HUNDRED SEVENTY THOUSAND NINE HUNDRED SIXTY-TWO AND 00/100 DOLLARS (\$670,962.00), the receipt and sufficiency of which are acknowledged, Grantor grants and conveys to Grantee in fee simple with covenant of General Warranty the real property located in Bullitt County, Kentucky, and more particularly described on EXHIBIT A and EXHIBIT B attached hereto and made a part hereof (the "Property").

Grantor covenants (a) lawful seisin of the Property, (b) full right and power to convey same, and (c) that the Property is free and clear of all liens and encumbrances, except liens for real property taxes and assessments due and payable in 2018 and thereafter, which Grantee assumes and agrees to pay. This conveyance is made subject to all (i) easements, restrictions and stipulations of record, and (ii) governmental laws, ordinances and regulations affecting the Property.

For purposes of KRS 382.135, Grantor and Grantee, by execution of this Deed, certify that the consideration reflected in this Deed is the full consideration paid for the Property.

For purposes of KRS 382.135, the in-care-of address to which the property tax bill for 2018 may be sent to is: 2499 Clermont Road, Clermont, Kentucky 40110.

This Property was partly acquired with funds provided to Grantee by the Imperiled Bat Conservation Fund and is intended to provide and conserve habitat in perpetuity for the Indiana bat and/or northern long-eared bat. The Property will be managed for this purpose, in accordance with applicable federal and state law. The Property may not be encumbered or disposed of in any manner, or used for purposes inconsistent with this purpose, without the prior written approval of the U.S. Fish and Wildlife Service's Kentucky Field Office.

If the sale or transfer of the Property, or any portion thereof, is considered by Grantee, such sale or transfer will only be to another "qualified conservation organization" as currently defined under the regulations of the U.S. Treasury Department and Internal Revenue Service. Grantee will notify the U.S. Fish and Wildlife Service's Kentucky Field Office of the proposed sale or transfer of the Property, or any portion thereof, at least 30 calendar days in advance of such sale or transfer.

IN WITNESS WHEREOF, Grantor and Grantee have executed this General Warranty Deed as of the date first set forth above, but actually on the dates set forth below.

GRANTOR:

SIMON REAL ESTATE HOLDINGS, LLC,
a Kentucky limited liability company

By Elizabeth S. Montgomery
Elizabeth S. Montgomery, Manager

Date: Oct 15, 2018

ISAAC W. BERNHEIM FOUNDATION,
a Kentucky corporation

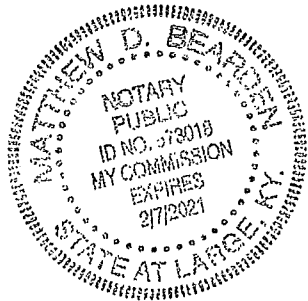
Mark K. Wourms, Executive Director

By Thomas Block
Thomas Block, President of Board of Trustees

COMMONWEALTH OF KENTUCKY)
) SS
COUNTY OF BULLITT)

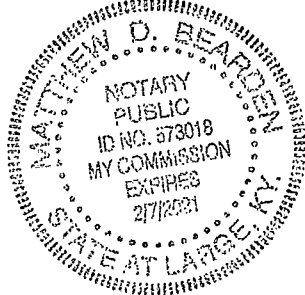
The foregoing General Warranty Deed, including the consideration certificate contained therein, was sworn to and acknowledged before me on Oct. 15, 2018 by Elizabeth S. Montgomery in her capacity as Manager of Simon Real Estate Holdings, LLC, a Kentucky limited liability company, on behalf of the company.

My Commission Expires: 2/7/21



COMMONWEALTH OF KENTUCKY)
) SS
COUNTY OF BULLITT)

The foregoing consideration certificate was sworn to and acknowledged before me on Oct 15, 2018 by Mark K. Wourms as Executive Director of Isaac W. Bernheim Foundation, a Kentucky corporation, on behalf of the corporation.

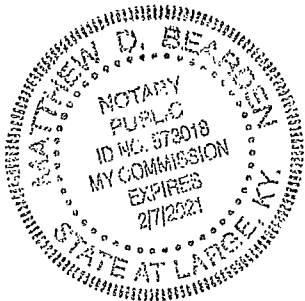


[Signature]
Notary Public

My Commission Expires: 2/7/21

COMMONWEALTH OF KENTUCKY)
) SS
COUNTY OF BULLITT)

The foregoing consideration certificate was sworn to and acknowledged before me on Oct 15, 2018 by Thomas Block as President of Board of Trustees of Isaac W. Bernheim Foundation, a Kentucky corporation, on behalf of the corporation.



[Signature]
Notary Public

My Commission Expires: 2/7/21

This Deed Prepared By:

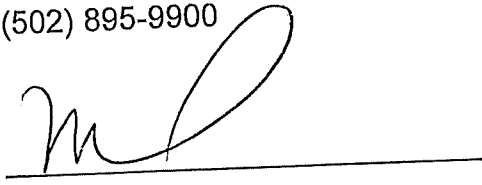
Matthew D. Bearden

PITT, FRANK, DISTLER & BEARDEN, P.S.C.

6450 Dutchmans Parkway

Louisville, Kentucky 40205

(502) 895-9900

A handwritten signature in black ink, appearing to be 'M. Bearden', is written over a horizontal line.

DOCUMENT NO: 605987
RECORDED: October 16, 2018 11:12:00 AM
TOTAL FEES: \$26.00 TRANSFER TAX: \$671.00
COUNTY CLERK: KEVIN MOONEY
DEPUTY CLERK: RITA
COUNTY: BULLITT CO CLERK
BOOK: D956 PAGES: 600 - 605

EXHIBIT A

2
Being the survey description PARCEL TWO of Simon Real Estate Holdings, LLC as recorded in Deed Book 725, Page 288, in the Office of the Clerk of Bullitt County, Kentucky and more particularly described as follows:

BEGINNING at an existing 5/8" iron pin with illegible cap, being the northeast corner of lot 448 and also being the southwest corner of Winding Creek Subdivision as recorded in the aforementioned clerk's office, Plat Cabinet 2, Slides 727 & 728; thence with the southerly line of the aforementioned subdivision North 88°10'52" East, 575.08 feet to an existing 1/2" iron pin w/ identifier cap "CLEMONS"; thence South 01°04'43" East, 87.31 feet to an existing 1/2" iron pin with identifier cap "CLEMONS"; thence South 82°58'36" East, 1288.10 feet to a set 1/2" iron pin with identifier cap "SHUFF 3417", and being a common corner with the property of Simon Real Estate Holdings, LLC Parcel 1 as recorded in Deed Book 725, Page, 280 in the aforementioned clerk's office; thence with said line South 63°29'49" East, 1466.00 feet to a set 1/2" iron pin with identifier cap "SHUFF 3417", being the Northwest Corner of the property of Lewis Kerberg as recorded in Deed Book 877, Page 330, in the aforementioned clerk's office; thence with the East line of Kerberg, South 05°50'25" West, 2917.77 feet to an existing stone; thence South 74°07'09" West, 71.65 feet to a set 1/2" iron pin with identifier cap "SHUFF 3417" in the North line of an unnamed 60 foot road as recorded in Hubert Cox Estates in Plat Cabinet 1, Slide 583; thence with said north line and the north line of the property of Carla Leigh & Deborah Lynn Cox, as recorded in Deed Book 255, Page 486, in the aforementioned clerk's office, North 85°51'19" West, 2127.42 feet to an existing 1/2 iron pin in a mound of stones and being the Northeast corner of the property of the Isaac W. Bernheim Foundation as recorded in Deed Book 914, Page 767, in the aforementioned clerk's office; thence with the North line of said property North 86°34'39" West, 947.95 feet to an existing 1/2" iron pin in a mound of stones, and also being the Southeast corner of Licksillet Farms, Section 24, as recorded in Plat Cabinet 1, Slide 591, in the aforementioned clerk's office; thence with the East line of Licksillet Farms North 04°15'08" East, 3602.53 feet to the point of beginning and containing 250.15 acres, more or less, as per field survey of Matthew S. Shufflebarger, PLS # 3417, dated June 18, 2018 and being recorded at Plat Cabinet 4 Slide 143 in the Office of Clerk of the Bullitt County court.

EXHIBIT B

BEGINNING at a stone near the head of a hollow, division corner to Bolton and running thence with the division line S 5 deg. 36' 34" W 2,931.65 ft. (formerly S 4 W 176 poles) to a wood fence post (formerly stone) in Lutes line; thence S 83 deg. 36' 34" W 90.75 ft. (formerly S 82 W 5-1/2 poles) to a stake (formerly a stone); thence N 86 deg. 11' 03" W 3,053.93 ft. (formerly S 88-1/2 W 180 poles) to a pile of stones; thence N 4 deg. 02' 29" E 3,602.49 ft. (formerly N 3-1/2 E 220 poles) to a pile of stones corner to Bolton; thence N 87 deg. 56'- 20" E 575.53 ft. (formerly N 86-1/4 E 35-1/5 poles) to a 10" oak; thence S 0 deg. 23' 29" E 85.95 ft. (formerly S 3-1/2 W 5-2/5 poles) to a 24" red oak; thence S 83 deg. 09' 22" E 1,286.87 ft. (formerly S 84-1/2 E 78 poles) to a stake for a white oak on north side of drain; thence S 63 deg. 42' 28" E 1,468.50 ft. (for. S 65 E 89 poles) to the point of beginning, containing approximately 250.717 acres.

EXHIBIT C

DEED II

GENERAL WARRANTY DEED

THIS GENERAL WARRANTY DEED is made and entered into as of
October 15, 2018, from

SIMON REAL ESTATE HOLDINGS II, LLC,
a Kentucky limited liability company
6009 Brownsboro Park Blvd., Suite H
Louisville, Kentucky 40207

("Grantor")

to

ISAAC W. BERNHEIM FOUNDATION,
a Kentucky corporation
2499 Clermont Road
Clermont, Kentucky 40110

("Grantee").

WITNESSETH

For a total consideration of SIX HUNDRED EIGHTY NINE THOUSAND THIRTY EIGHT AND 00/100 DOLLARS (\$689,038.00), the receipt and sufficiency of which are acknowledged, Grantor grants and conveys to Grantee in fee simple with covenant of General Warranty the real property located in Bullitt County, Kentucky, and more particularly described on EXHIBIT A and EXHIBIT B attached hereto and made a part hereof (the "Property").

Grantor covenants (a) lawful seisin of the Property, (b) full right and power to convey same, and (c) that the Property is free and clear of all liens and encumbrances, except liens for real property taxes and assessments due and payable in 2018 and thereafter, which Grantee assumes and agrees to pay. This conveyance is made subject to all (i) easements, restrictions and stipulations of record, and (ii) governmental laws, ordinances and regulations affecting the Property.

For purposes of KRS 382.135, Grantor and Grantee, by execution of this Deed, certify that the consideration reflected in this Deed is the full consideration paid for the Property.

For purposes of KRS 382.135, the in-care-of address to which the property tax bill for 2018 may be sent to is: 2499 Clermont Road, Clermont, Kentucky 40110.

This Property was partly acquired with funds provided to Grantee by the Imperiled Bat Conservation Fund and is intended to provide and conserve habitat in perpetuity for the Indiana bat and/or northern long-eared bat. The Property will be managed for this purpose, in accordance with applicable federal and state law. The Property may not be encumbered or disposed of in any manner, or used for purposes inconsistent with this purpose, without the prior written approval of the U.S. Fish and Wildlife Service's Kentucky Field Office.

If the sale or transfer of the Property, or any portion thereof, is considered by Grantee, such sale or transfer will only be to another "qualified conservation organization" as currently defined under the regulations of the U.S. Treasury Department and Internal Revenue Service. Grantee will notify the U.S. Fish and Wildlife Service's Kentucky Field Office of the proposed sale or transfer of the Property, or any portion thereof, at least 30 calendar days in advance of such sale or transfer.

IN WITNESS WHEREOF, Grantor and Grantee have executed this General Warranty Deed as of the date first set forth above, but actually on the dates set forth below.

GRANTOR:

SIMON REAL ESTATE HOLDINGS II, LLC,
a Kentucky limited liability company

By Elizabeth S. Montgomery
Elizabeth S. Montgomery, Manager

Date: Oct 15, 2018, 2018

GRANTEE:

ISAAC W. BERNHEIM FOUNDATION,
a Kentucky corporation

By Mark K. Wourms
Mark K. Wourms, Executive Director

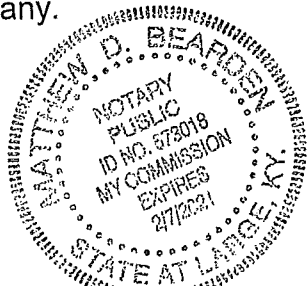
Date: 15 October, 2018

By Thomas Block
Thomas Block, President of Board of Trustees

Date: 15 October, 2018

COMMONWEALTH OF KENTUCKY)
) SS
COUNTY OF BULLITT)

The foregoing General Warranty Deed, including the consideration certificate contained therein, was sworn to and acknowledged before me on Oct. 15, 2018 by Elizabeth S. Montgomery in her capacity as Manager of Simon Real Estate Holdings II, LLC, a Kentucky limited liability company, on behalf of the company.

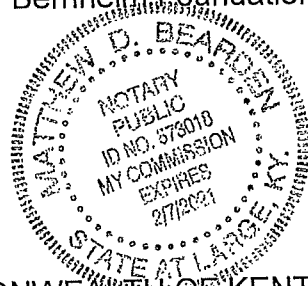


[Signature]
Notary Public

My Commission Expires: 2/7/21

COMMONWEALTH OF KENTUCKY)
) SS
COUNTY OF BULLITT)

The foregoing consideration certificate was sworn to and acknowledged before me on Oct. 15, 2018 by Mark K. Wourms as Executive Director of Isaac W. Bernheim Foundation, a Kentucky corporation, on behalf of the corporation.

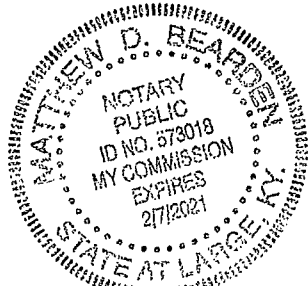


[Signature]
Notary Public

My Commission Expires: 2/7/21

COMMONWEALTH OF KENTUCKY)
) SS
COUNTY OF BULLITT)

The foregoing consideration certificate was sworn to and acknowledged before me on Oct 15, 2018 by Thomas Block as President of Board of Trustees of Isaac W. Bernheim Foundation, a Kentucky corporation, on behalf of the corporation.



[Signature]
Notary Public

My Commission Expires: 2/7/21

this Deed Prepared By:
Matthew D. Bearden
PITT, FRANK, DISTLER & BEARDEN, P.S.C.
6450 Dutchmans Parkway
Louisville, Kentucky 40205
(502) 895-9900

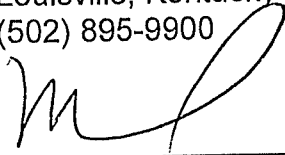
A handwritten signature in black ink, appearing to be 'M. Bearden', written over a horizontal line.

EXHIBIT A

PARCEL ONE AND TWO (Cedar Grove Road, Cox's Acres Lots, and Cooney):

Being the survey description PARCEL ONE and PARCEL TWO of Simon Real Estate Holdings II, LLC as recorded in Deed Book 725, Page 280, in the Office of the Clerk of Bullitt County, Kentucky and more particularly described as follows:

BEGINNING at an existing $\frac{1}{2}$ " iron pin with identifier cap "CLEMONS" and being a corner of Lot 26 Winding Creek Subdivision as recorded in Plat Cabinet 2, Slide 728 in the aforementioned clerk's office; thence with the line of said lot South $89^{\circ}15'51''$ East, 157.88 feet to an existing $\frac{1}{2}$ " iron pin with identifier cap "CLEMONS" and being the Southwest corner of the property conveyed to Barry E. & Lois Woods in Deed Book 290, PG 490 in the aforementioned clerk's office; thence with the South line of Woods South $85^{\circ}17'28''$ East, 1471.21 feet to a set $\frac{1}{2}$ " iron pin with identifier cap "SHUFF 3417" being in the South line of Cedar Grove Road; thence with said line South $80^{\circ}36'00''$ East, 201.19 feet to a set $\frac{1}{2}$ " iron pin with identifier cap "SHUFF 3417" and being the Northwest corner of the Travis R. Minks property as recorded in Deed Book 911, Page 521 in the aforementioned clerk's office; thence leaving Cedar Grove Road with the West line of Minks South $04^{\circ}18'06''$ West, 1309.79 feet to an existing $\frac{3}{4}$ " iron pin with T-Post and being the Southwest corner of the Douglas Ray & Ladonne Cooney property as recorded in Deed Book, 278, Page 162 in the aforementioned clerk's office; thence with the line of Cooney South $87^{\circ}12'20''$ East, 645.40 feet to an existing $\frac{1}{2}$ " iron pin with identifier cap "LEIGH 1776" in the West line of Lot 33 of Cox's Acres as recorded in Plat Cabinet 1, Slide 278, in the aforementioned clerk's office; thence with the West line of said subdivision South $04^{\circ}19'51''$ West, 585.40 feet to an existing $\frac{1}{2}$ " iron pin and being the Southwest corner of Lot 28 Cox's Acres; thence with the South line of Lot 28, South $85^{\circ}53'36''$ East, 506.52 feet to a set $\frac{1}{2}$ " iron pin with identifier cap "SHUFF 3417" in the West line of Sharon Drive; thence with the line of Sharon Drive South $04^{\circ}29'24''$ West, 416.20 feet to an existing $\frac{3}{4}$ " iron pin; thence South $85^{\circ}42'46''$ East, 60.00 feet to an existing $\frac{3}{4}$ " iron pin in the East line of Sharon Drive; thence with the line of Sharon Drive North $04^{\circ}29'24''$ East, 568.03 feet to the Southwest corner of Lot 20 Cox's Acres; thence leaving Sharon Drive and with the common line of lots 20 and 21 in Cox's Acres, South $85^{\circ}53'36''$ East, 540.36 feet to set $\frac{1}{2}$ " iron pin with identifier cap "SHUFF 3417" in the East line of Cox's Acres and also being in the line of David and Jolynne Clark as recorded in Deed Book 620, Page 627; thence with the East line of Cox's Acres South $04^{\circ}24'45''$ West, 569.73 feet to an existing stone and being the Southeast corner of Cox's Acres and also being in the line of Roger D. & Patsy Brown as recorded in Deed Book 216, Page 582 in the aforementioned clerk's office; thence with the line of Brown South $04^{\circ}31'29''$ West, 376.62 feet to an existing stone and being the common corner with John Edgar Sivori III as recorded in Deed Book 569, Page 14 in the aforementioned clerk's office; thence with the line of Sivori South $50^{\circ}40'11''$ East, 727.15 feet to an existing pile of stones and being a common corner to Othen T. & Juanita Colyer as recorded in Deed Book 500, Page 660 in the aforementioned clerk's office; thence with the line of Colyer South $68^{\circ}11'31''$ West, 860.73 feet to an existing $\frac{1}{2}$ " iron pin; thence South $21^{\circ}03'15''$ East, 598.49 feet to an existing $\frac{1}{2}$ " iron pin in the North line of Lewis Kerberg as recorded in Deed Book 877, Page 330 in the aforementioned clerk's office; thence with Kerberg's line South $69^{\circ}59'25''$ West, 745.75 feet to a set $\frac{1}{2}$ " iron pin with identifier cap "SHUFF 3417" and being a common corner with Simon Real Estate Holdings, LLC, Parcel 2 as recorded in Deed Book 725, Page 288 in the aforementioned clerk's office; thence with the Simon line North $63^{\circ}29'49''$ West, 1466.00 feet to a set $\frac{1}{2}$ " iron pin with identifier cap "SHUFF 3417"; thence North $82^{\circ}58'36''$ West, 157.32 feet to an

existing ½" iron pin with identifier cap "CLEMONS" and being the Southeast corner of Winding Creek Subdivision as recorded in Plat Cabinet 2, Slides 727 & 728 in the aforementioned clerk's office; thence with the line of winding Creek Subdivision North 20°23'04" West, 1593.87 feet to an existing ½" iron pin with identifier cap "SPURRIER 3695"; thence North 17°39'37" West, 886.44 feet to an existing ½" iron pin with identifier cap "SPURRIER 3695"; thence North 52°23'55" East, 98.40 feet to an existing 1/2" iron pin with identifier cap "SPURRIER 3695"; thence North 10°02'54" West, 247.64 feet to an existing ½" iron pin with identifier cap "SPURRIER 3695"; thence North 36°56'13" West, 113.44 feet to an existing ½" iron pin with identifier cap "SPURRIER 3695"; thence North 46°20'05" West, 183.09 feet to an existing ½" iron pin; thence North 17°39'37" West, 721.38 feet to an existing ½" iron pin; thence North 05°41'29" East, 323.97 feet to the point of beginning and containing 205.71 acres, more or less, as per field survey of Matthew S. Shufflebarger, PLS # 3417, dated June 18, 2018 and being recorded at Plat Cabinet 4 Slide 144 in the Office of Clerk of the Bullitt County court.

PARCEL THREE (Licksillet Farms):

Being the survey description of PARCEL THREE of Simon Real Estate Holdings II, LLC as recorded in Deed Book 725, Page 280, in the Office of the Clerk of Bullitt County, Kentucky and more particularly described as follows:

BEGINNING at an existing 5/8" iron pin with illegible cap, being the northeast corner of lot 448 Licksillet Farms, Section 23 as recorded in Plat Cabinet 1, Slide 588 and also being the southwest corner of Winding Creek Subdivision as recorded in the aforementioned clerk's office, Plat Cabinet 2, Slides 727 & 728; thence with the easterly line of Licksillet Farms Section 23, South 04°15'41" West, 999.29 feet to an existing ½" iron pin and being the Northeast corner of Lot 450 Licksillet Farms Section 23; thence with the North line of Lot 450, North 88°12'12" West, 319.59 feet to an existing 1/2" iron pin and being the southeast corner of lot 449 Licksillet Farms Section 23; thence with the East line of Lot 449, North 17°16'36" West, 228.12 feet to an existing 1/2" iron pin; thence with the North line of Lot 449, South 73°19'38" West, 381.91 feet to a set 1/2" iron pin with cap "SHUFF 3417" in the centerline of Licksillet Farms Road, a 50' right of way; thence with said centerline North 30°23'29" West, 77.54 feet; thence North 44°14'20" West, 29.03 feet; thence South 88°44'28" West, 33.05 feet; thence South 84°24'47" West 197.96 feet; thence South 78°57'04" West, 78.11 feet; thence South 71°51'41", 94.60 feet; thence South 62°24'39", 83.26 feet; thence South 16°37'12" West, 129.78 feet; thence South 07°30'05" West, 51.45 feet; thence North 19°54'24" West, 124.57 feet; thence South 57°58'53" West, 94.63 feet; thence South 78°21'52" West, 76.64 feet; thence South 73°05'17" West, 97.26 feet; thence North 89°39'04" West, 80.01 feet; thence North 80°48'58" West, 151.12 feet to a set 1/2" iron pin with cap "SHUFF 3417", also being the Southwest corner of Lot 444 Licksillet Farms Section 22 as recorded in Plat Cabinet 1, Slide 587 in the aforementioned clerk's office; thence with the west line of Lot 444 North 00°56'49" West, 959.27 feet, to the North line of Licksillet Farms Section 22; thence with the north line of Licksillet Farms Sections 22, North 77°08'42" East 302.05 feet, to an existing 2" iron pipe; thence North 76°56'25" East, 1188.28 feet to an existing 1 ¾" iron pipe in a mound of stones; thence South 85°19'17" East, 486.45 feet to the point of beginning and containing 38.47 acres, more or less, as per field survey of Matthew S. Shufflebarger, PLS # 3417, dated June 18, 2018 and being recorded at Plat Cabinet 4 Slide 145 in the Office of Clerk of the Bullitt County court.

EXHIBIT B

PARCEL ONE: (Cedar Grove Road and Cox's Acres Lots)

TRACT NO. I: BEGINNING at a stone in the line of D. N. Crenshaw and corner to Raymond Cox; thence with line of Cox and continuing with line of Bolton Heirs, South 86° East 1933 feet to an iron rod corner to remaining land of Colyer; thence with remaining land of Colyer, South 22-1/2° East 1870 feet to an iron rod in line of Francke; thence with line of Francke, South 69-3/4° West 710 feet to a stone at the head of a small hollow; thence continuing with line of Francke, North 63-1/2° West 1441 feet to a post; thence continuing with line of Francke, North 83° West 165 feet to a steel stake corner to remaining land of Colyer (to be conveyed to D. N. Crenshaw); thence North 18-1/2° West 925 feet to a stake on beech corner to D. N. Crenshaw; thence with line of Crenshaw, North 18-1/2° West 578 feet to the point of beginning, containing 80 acres as shown by survey of Urban E. Shaffner dated July 27, 1971.

There is also conveyed herewith a 60 foot permanent easement across the 31.4 acres of land previously retained by Colyer. Said easement beginning in line of the County Road and Colyer line; thence in a westerly direction through the land retained by Colyer to the tract conveyed to Givhan and Porter.

TRACT NO. II: A certain tract of land located in Bullitt County, Kentucky, lying 4.8 miles East of Salt River, Kentucky, and being about 3000 ft. south of the Cedar Grove Church (Junction of Ky. Highway 1640 with #480) and described as follows:

BEGINNING in a steel stake corner with J. Chester Porter in the line of Bolton Heirs; thence with the heirs South 86° East 787 feet to a stone 10 feet North of a marked pine, South 4-1/2° West 386 feet to a rock pile, and South 51-1/4° East 726 feet to a rock pile in the remains of an ancient fence 3.8 feet North of an "X" painted beech; thence in a division of Othen Colyer South 68-1/4° West 868-1/2 feet to an iron rod 15 feet East of the top of a ridge; thence with J. Chester Porter N 22-1/2° West 1271 feet to the beginning, containing 20.0 acres as shown by survey of Urban E. Shaffner dated December 16, 1971.

TRACT NO. III: LOTS NOS. 21, 22, 23, 24, 25, 26 and 27 of COX'S ACRES, as shown on amended plat recorded in Plat Book 5, Page 70, in the Bullitt County Clerk's Office.

TRACT NO. IV: Beginning at a nail in a 14° walnut in line of Greenwell corner to Crenshaw; thence with line of Greenwell, South 85° 50' East 408.0 feet to a post; thence South 86° 10' East 231.4 feet to a post; thence South 86° 00' East 116.8 feet to a post; thence crossing a branch, South 85° 30' East 107.0 feet to a post; thence South 87° 10' East 215.0 feet to a post at water gap; thence crossing a branch, South 85° 45' East 210.0 feet to a post; thence South 79° 30' East 112.0 feet to a post in right-of-way of Cedar Grove Road (Highway 480); thence with South line of Cedar Grove Road (Highway 480), South 82° 45' East 74.4 feet to a steel post; thence South 80° 00' East 324.6 feet to a post corner to remaining land of Raymond Cox; thence with remaining land of Cox, South 5° 03' West 2311.0 feet to line of Porter; thence with line of Porter, North 85° 20' West 1639.21 feet to a stone in line of D. H. Crenshaw; thence with line of Crenshaw, North 16° 34' West 2171.1 feet to a stake; thence North 5° 50' East 409.1 feet to the point of beginning and containing 80.0 acres as shown by survey of Curtis Ochs, Jr., dated October 5, 1972.

PARCEL TWO: (Cooney)

BEGINNING at an iron pin in the East line of the balance of Simon's 79.348 acre tract, said pin being South 4-06-32 West 271.65 feet from the Southeast corner of lot #6 Cedar Woods Subdivision Sec. #1; thence with a new division line with Cooney South 86-17-31 East 645.72 feet to an iron pin in the West line of lot #33 Cox's Acres Subdivision; thence with said Subdivision South 4-07-35 West 1,000.00 feet to an existing iron pipe in the North line of Frank Simon's 101.704 acre tract; thence with Simon North 86-1732 West 645.42 feet to an existing iron pipe, a corner to the balance of Simon's 79.348 acre tract; thence with Simon North 4-06-32 East 1,000.00 feet to the point of beginning containing 14.820 acres as per survey by Raymond E. Leigh, Jr., dated June 29, 1987.

PARCEL THREE: (Lickskillet Farms)

Being Lots 444, 445, and 446, of Lickskillet Farms Subdivision, Section 22, plat of which is recorded in Plat Cabinet 1, Slide 587, in the Bullitt County Clerk's Office and Lots 447 and 448, of Lickskillet Farms Subdivision, Section 23, plat of which is recorded in Plat Cabinet 1, Slide 588, in the Bullitt County Clerk's Office.

Being PARCEL ONE (TRACTS I, II, III and IV), PARCEL TWO and PARCEL THREE conveyed to Grantor by General Warranty Deed dated July 31, 2008, of record in Deed Book 725, Page 280, in the Bullitt County Clerk's Office.

DOCUMENT NO: 605988
RECORDED: October 16, 2018 11:14:00 AM
TOTAL FEES: \$35.00 TRANSFER TAX: \$689.50
COUNTY CLERK: KEVIN MOONEY
DEPUTY CLERK: RITA
COUNTY: BULLITT CO CLERK
BOOK: D956 PAGES: 606 - 614

EXHIBIT D

**JANUARY 2019 –
MARCH 2019
EMAIL THREAD**

Mayer, Timothy (EEC)

From: Bruner, Cheryl <Cheryl.Bruner@lge-ku.com>
Sent: Sunday, March 3, 2019 8:25 PM
To: Weese, Zeb L (EEC)
Cc: Holderman, Jim
Subject: RE: LG&E and Bernheim

Zeb,
Thank you for the reply. We will get back in touch with Mark.
Kind regards,
Cheryl

From: Weese, Zeb L (EEC) <Zeb.Weese@ky.gov>
Date: March 3, 2019 at 3:52:06 PM EST
To: Bruner, Cheryl <Cheryl.Bruner@lge-ku.com>
Cc: Holderman, Jim <Jim.Holderman@lge-ku.com>
Subject: RE: LG&E and Bernheim

EXTERNAL email. STOP and THINK before responding, clicking on links, or opening attachments.

Hello, Cheryl,

I am sorry I didn't get back to you sooner. The KHLCF has discussed this issue and determined that it will take no position or action unless requested to do so by the Bernheim Board as the easement grantor. If Mark or the Bernheim Board requests a meeting we will be glad to attend.

Thank you, Zeb

Zeb Weese
Executive Director, Office of Kentucky Nature Preserves
Chairman, Kentucky Heritage Land Conservation Fund Board
Kentucky Energy and Environment Cabinet
300 Sower Blvd, 4th Floor, Frankfort, KY 40601
Office: (502)782-7837 zeb.weese@ky.gov eec.ky.gov

From: Bruner, Cheryl [mailto:Cheryl.Bruner@lge-ku.com]
Sent: Thursday, February 28, 2019 10:14 AM
To: Weese, Zeb L (EEC) <Zeb.Weese@ky.gov>
Cc: Holderman, Jim <Jim.Holderman@lge-ku.com>
Subject: Re: LG&E and Bernheim

Hello Zeb,

I wanted to check in again on the progress of this issue with the Stewardship Committee and Bernheim. I look forward to hearing from you.

Kind regards,
Cheryl

From: Weese, Zeb L (EEC) <Zeb.Weese@ky.gov>

Date: January 24, 2019 at 3:14:12 PM GMT+1

To: Bruner, Cheryl <Cheryl.Bruner@lge-ku.com>

Subject: Re: LG&E and Bernheim

EXTERNAL email. STOP and THINK before responding, clicking on links, or opening attachments.

Cheryl,

This was brought up at the KHLCF Board meeting yesterday. The Stewardship Committee will reach out to Bernheim and get back to you.

Thanks, Zeb

Zeb Weese
Executive Director, Office of Kentucky Nature Preserves
Chairman, Kentucky Heritage Land Conservation Fund Board
Kentucky Energy and Environment Cabinet
[300 Sower Blvd, 4th Floor, Frankfort, KY 40601](#)
Office: [\(502\)782-7837](tel:502782-7837) zeb.weese@ky.gov

Sent from my mobile device

On Jan 22, 2019, at 4:19 PM, Bruner, Cheryl <Cheryl.Bruner@lge-ku.com> wrote:

****CAUTION** PDF attachments may contain links to malicious sites. To verify the destination of the hyperlink in an attachment, hover your mouse over the link and verify the link address. If you are unfamiliar with the address or the address looks suspicious, do not click on the link and delete the email immediately. Please contact the COT Service Desk ServiceCorrespondence@ky.gov for any assistance.**

Dear Zeb,

This email is in follow up to our phone conversation this morning. As I mentioned, I have responsibility for LG&E's Real Estate and Right-of-Way activities. LG&E would like to purchase an easement across property recently acquired by the Bernheim Foundation and subject to a conservation easement granted to the Kentucky Heritage Land Conservation Fund.

LG&E has received approval from the Kentucky Public Service Commission for a new natural gas pipeline that will strengthen reliability for existing LG&E natural gas customers by creating an additional path for natural gas traveling through the system to serve residents and businesses in the Bullitt County area.

The added capacity provided by the pipeline is needed to support residential, commercial and industrial growth in the area.

To date, LG&E has purchased the majority of the easements needed for the planned pipeline. A portion of the planned pipeline would cross the former Simon property, now owned by the Bernheim Foundation, such that it would run next to existing easements for an EKPC electric transmission line, to minimize the impact to the land. A copy of the plat showing the proposed pipeline easement is attached.

LG&E would like the KHLCF Board and the Bernheim Foundation to agree to allow LG&E to purchase a pipeline easement. As we discussed, we would appreciate the opportunity to meet with the appropriate representatives of the KHLCF and Bernheim to answer any and all questions you may have. We will make ourselves available to meet any time and look forward to hearing back from you soon with a date for the meeting. Thank you.

Kind regards,

Cheryl E. Bruner

Director, Operating Services & Corporate Security | LG&E and KU Energy LLC

820 West Broadway, Louisville, KY 40202

M: 502-640-1244 | **O:** 502-627-3945 | **F:** 502-627-4881

lge-ku.com

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<LGE-BC-PP-39_REV3 Bernheim.pdf>

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EXHIBIT E

AFFIDAVIT OF JASON L. WEESE

AFFIDAVIT

COMES the Affiant, Jason "Zeb" L. Weese, and after first being duly sworn, does hereby depose and state as follows:

1. I am the Director of the Energy and Environment Cabinet, Office of Kentucky Nature Preserves, a position I have held since November 2016. Altogether, I have worked for OKNP and its predecessor agencies since 2006.

2. In addition to my job duties as Director of OKNP, I have been appointed as the Chairman of the Kentucky Heritage Land Conservation Fund ("KHLCHF") Board, which is attached to the Energy and Environment Cabinet. As the Chairman of the KHLCHF Board, I am the registered agent and I receive all correspondence sent to the Board.

3. Pursuant to KRS 146.560(2), the KHLCHF Board reviews and approves applications for funds submitted by other agencies and private, nonprofit land trust organizations for the acquisition of natural areas that possess unique features such as habitat for rare and endangered species; areas important to migratory birds; areas that perform important natural functions that are subject to alteration or loss; or areas to be preserved in their natural state for public use, outdoor recreation and education.

4. In March 2017, the Isaac W. Bernheim Foundation ("Bernheim") submitted an application for the purchase of 494.33 acres of land in Bullitt County, Kentucky ("Simon Tract"). Bernheim requested \$706,000.00 and indicated that it would be able to match the remainder of the purchase price of the land. The KHLCHF Board approved the project in May 2017. Bernheim purchased the Simon Tract on October 15, 2018.

5. In exchange for funding, Bernheim agreed to grant the KHLCHF Board a conservation easement on the Simon Tract. The parties executed the conservation easement on October 15, 2018.

6. At no point prior to October 15, 2018, was the KHLCHF Board aware of any desire or interest by the Louisville Gas and Electric Company ("LG&E") to acquire an easement across the Simon Tract in order to install a natural gas pipeline.

7. The KHLCHF Board did not become aware that LG&E desired to install a natural gas pipeline across the Simon Tract until I was contacted by Cheryl Bruner, a representative for LG&E, by phone on January 22, 2019.

8. Prior to the initiation of the condemnation action, the last time the KHLCHF Board received any communication from a representative of LG&E regarding the proposed pipeline project was by letter and email dated April 8, 2019.

9. The KHLCHF Board never received a monetary offer from LG&E for the purchase of an easement for its proposed natural gas pipeline.

Further the Affiant sayeth naught.

Jason L. Weese
Jason L. Weese

STATE OF KENTUCKY)
)
COUNTY OF Franklin)

Subscribed and sworn to before me by Jason L. Weese, on this 14th day of
November, 2019.

My commission expires: June 4, 2023.

Notary Public
NOTARY PUBLIC, STATE AT LARGE

EXHIBIT F

**MARCH 18, 2019
LETTER AND
ENCLOSURES**



PPL companies

Kentucky Heritage Land Conservation Fund
Attn: Board Members
300 Sower Boulevard
Frankfort, KY 40601

March 19, 2019

LG&E's Proposed Bullitt County Natural Gas Pipeline

Dear Board Members:

I have responsibility for the right-of-way acquisition activities for Louisville Gas and Electric Company ("LG&E"). I am writing to follow up on our communications with the Isaac W. Bernheim Foundation ("Bernheim") and Kentucky Heritage Land Conservation Fund Board ("KHLCF") concerning LG&E's planned natural-gas pipeline in Bullitt County.

Although Bernheim has indicated it is opposed to seeking a modification to the Conservation Easement to permit this project to cross Bernheim's recently acquired property, LG&E respectfully requests the opportunity to continue discussions with Bernheim and KHLCF about this project. Specifically, we request the opportunity to provide information about our commitment to proceed in a way that is consistent with the long-term conservation of scenery, wildlife and other resources under Bernheim's care. We want to listen and understand Bernheim's and KHLCF's concerns and meaningfully engage with each other as we balance the energy needs of the community with the preservation of precious resources. We feel confident that through collaboration we can responsibly reach a mutual agreement that provides the best balance.

Together, we can work together as a utility company and park to contribute toward outstanding places to live, work and play. Our Kentucky communities need all three to thrive. Bernheim and LG&E have both been pillars in Kentucky for many generations, and certainly will continue to be for generations to come. The new pipeline, which was approved by the Kentucky Public Service Commission in 2016, will strengthen economic vitality and energy security by creating an additional path for natural gas traveling through the system.

The pipeline is expected to be approximately 12 miles in length, connecting an existing LG&E natural gas transmission line in eastern Bullitt County to an existing LG&E distribution line in the vicinity of Shepherdsville providing an additional gas supply to the existing distribution system currently serving parts of Bullitt County including parts of Mt. Washington, Shepherdsville, Clermont

LG&E and KU
Operating Services &
Corporate Security
820 West Broadway
Louisville, KY 40202
www.lge-ku.com

Cheryl Bruner
Director
T 502-627-3945
F 502-627-4881
Cheryl.Bruner@lge-ku.com



PPL companies

and Lebanon Junction. As proposed, the pipeline crosses approximately 78 separate tracts of land, two of which Bernheim acquired in October 2018 and subsequently granted conservation easements on the properties to the KHLCF. LG&E had been in contact with the previous owner of the properties since March 2017 in an effort to obtain necessary easement rights. After Bernheim acquired the properties, LG&E contacted Bernheim and KHLCF in the hopes of negotiating an easement to allow LG&E to construct the pipeline while addressing Bernheim and KHLCF's concerns. There are a number of construction and remediation topics to discuss, including but not limited to:

- LG&E's planned pipeline route was designed to run parallel to an existing energy corridor – East Kentucky Power Cooperative's ("EKPC") transmission lines – across the properties in an effort to avoid disturbing other portions of land or creating a new separation through the middle of a forested area.
- Our plans to run parallel to the existing electric transmission lines also allow for a relatively straight pathway, which helps minimize tree clearing.
- Bernheim will have the opportunity to help plan the planting of native grasses and/or pollinator habitats along the pipeline route to foster needed growth of these in the area.
- Appropriate compensation will be paid to Bernheim, as it will be to all property owners from whom easements have been obtained, for the easement.

LG&E requests the opportunity to meet with representatives from Bernheim and KHLCF by April 5th. We will make ourselves available in the day or evening to suit your schedules. I'd appreciate a call or email with your response. Also, please let me know if you have any questions or if there is any additional information Bernheim and KHLCF would like to review in anticipation of the requested meeting. Thank you.

Sincerely,

A handwritten signature in blue ink that reads "Cheryl Bruner".

Cheryl Bruner

Enclosures: Deed of Easement and exhibits

Cc: Zeb Weese, Executive Director Office of Kentucky Nature Preserve
Mark Wourms, Executive Director Bernheim
Isaac W. Bernheim Foundation, Board of Trustees

DEED OF EASEMENT

This DEED OF EASEMENT made and entered into on this the _____ day of _____, 20____, by and between the undersigned, **ISAAC W. BERNHEIM FOUNDATION**, a Kentucky corporation, with a mailing address of 2499 Clermont Road, Clermont, Kentucky 40110 Tax Parcel ID# 065-000-00-005 and 065-000-00-030A, Grantor, and **LOUISVILLE GAS and ELECTRIC COMPANY**, a Kentucky corporation, having its principal office and place of business at 220 West Main Street, Louisville, Kentucky 40202, Grantee.

WITNESSETH:

That for and in consideration of Ten dollars (\$10) and other consideration, the receipt of which is hereby acknowledged, the Grantor does hereby grant and convey unto the Grantee, its successors, assigns, and lessees, the right, power and privilege to construct, inspect, maintain, operate, enlarge, rebuild and repair one or more pipelines for the transmission and distribution of gas, and all appurtenances thereto, (including, without limitation, an electric service line), along and upon the permanent easement and right-of-way hereinafter described (the "Permanent Easement Area") together with the right of ingress and egress over the lands of the undersigned to and from said line or lines in the exercise of the rights and privileges herein granted; provided, however, that in exercising such rights of ingress and egress, the Grantee will, whenever practicable to do so, use regularly established highways, farm roads or other roadways upon such lands.

In addition Grantor does hereby grant and convey unto the Grantee, its successors, assigns, and lessees, the right, power and privilege to use the temporary easement hereinafter described (the "Temporary Easement") for activities relating to the construction of pipelines within the Permanent Easement Area, including, without limitation, storage and staging of equipment and materials. Such Temporary Easement shall terminate and automatically revert to the Grantor upon completion of the construction of the gas pipeline or pipelines in the Permanent Easement Area.

Grantor grants to Grantee the further right to cut, trim and remove any and all trees located upon the Permanent Easement Area and also the right to cut, trim and remove vegetation and all other obstructions and obstacles from the Permanent Easement Area.

It is further expressly understood and agreed that the Grantee will pay to the undersigned any and all damage to real and tangible personal property that may be caused by the Grantee in going upon said lands and Permanent Easement Area, except that the Grantee will not be liable for any damage for cutting, trimming and removing trees, vegetation, obstructions and obstacles in the manner and to the extent herein above specified.

Neither the granting nor termination of the easements granted under this instrument shall have the effect of limiting Grantee's rights under any other easement of record on Grantor's Property.

The Grantor, its successors, heirs or assigns, may use and enjoy the lands crossed by the easements granted herein, except, however, that such use shall not conflict with any of the rights and privileges herein granted. In particular, but not by way of limitation, no building, sign, tower, antenna, swimming pool or any other structure shall be erected or maintained along or upon the Permanent Easement Area nor shall any changes in grade be made to the lands crossed by this easement which shall interfere with the privileges and rights herein granted. Further, the activities of Grantor, its successors,

heirs, and assigns upon and within the Permanent Easement Area shall be governed by the Gas Transmission Pipeline Restrictions attached hereto as Exhibit B and incorporated herein by reference.

The Permanent Easement Area is 50 feet wide lying 25 feet on both sides of the centerline labeled as Permanent Easement on the drawing attached hereto as Exhibit A and incorporated herein by reference, insofar as the lands of the Grantor extend to 25 feet on each side of said center line and containing 4.46 acres.

The Temporary Workspace is shown by the hatched areas on Exhibit A and containing 2.64 acres.

The lands over which this easement is granted are situated in the County of Bullitt, Commonwealth of Kentucky, and were conveyed to Grantor by Simon Real Estate Holdings II, LLC on October 15, 2018 and recorded in Deed Book 0956, Page 0606, and Simon Real Estate Holdings, LLC on October 15, 2018 and recorded in Deed Book 0956, Page 0600 in the Office of the Clerk of the County Court of Bullitt County.

The Grantor does hereby release and relinquish unto the Grantee, its successors, lessees and assigns, all of its interest in and to the easement herein granted, for the uses and purposes aforesaid, and it does hereby covenant to and with the Grantee that it is seized in fee simple of the property upon which said easement lies and has good and perfect right to convey the easement as herein done and it does WARRANT GENERALLY its title for the uses and purposes of this Deed of Easement.

IN TESTIMONY WHEREOF, witness the signature(s) of Grantor(s) this ____ day of _____, 20____.

ISAAC W. BERNHEIM FOUNDATION

BY:_____

TITLE:_____

COMMONWEALTH OF KENTUCKY)

COUNTY OF BULLITT)

I, _____, a Notary Public in and for the State and County aforesaid, certify that the foregoing instrument was acknowledged before me by _____, personally known to me to be the

_____ of **ISAAC W. BERNHEIM FOUNDATION**,
appeared before me this day in person in the State and County aforesaid and acknowledged the execution
and delivery of the foregoing instrument to be the free act and deed of **ISAAC W. BERNHEIM**
FOUNDATION, and their free act and deed as such officer thereof

Witness my hand this _____ day of _____, 20____.

My Commission Expires: _____

NOTARY PUBLIC

This instrument prepared by:

James J. Dimas, Senior Corporate Attorney
LG&E and KU Services Company
220 West Main Street
Louisville, Kentucky 40202
Phone 502-627-3712

EXHIBIT B

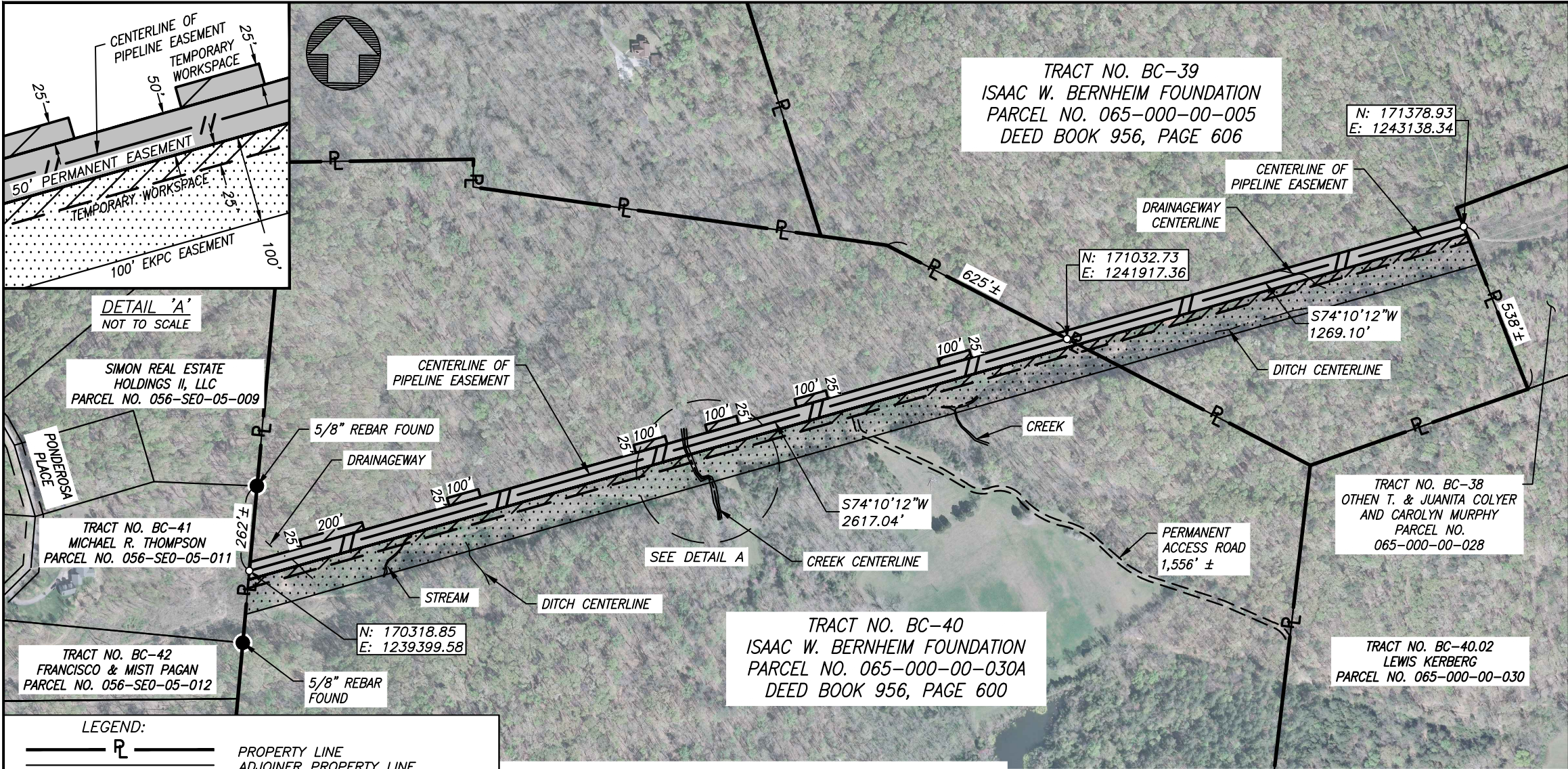
GAS TRANSMISSION PIPELINE RESTRICTIONS

As set forth in the Deed of Easement, the activities of Grantor, its successors, heirs, and assigns upon and within the Permanent Easement Area (as defined in the Deed of Easement) are governed by the Gas Transmission Pipeline Restrictions set forth in this Exhibit.

1. Prior notification shall be given to Grantee no less than forty-eight (48) hours in advance of any construction to be performed within the Permanent Easement Area to allow Grantee the opportunity to have representation on site during construction. Please call (502) 364-8550.
2. Above and below ground obstructions (including but not limited to fire hydrants, valves, utility poles, guy wires, pad transformers, splice and pull boxes, light standards, buildings, pools, ponds, trees, drainage culverts, and shrubbery) shall not be permitted on the Permanent Easement Area without Grantee's express prior written approval. Any obstructions allowed by Grantee are subject to future removal by Grantee for purposes of pipeline maintenance or construction and Grantee shall not be liable for their replacement.

3. The depth of cover, defined as the distance from the top of pipe to grade, of Grantee's gas pipelines shall be maintained at a minimum of 36 inches, but 48 inches is preferred. Changes in grade cannot be made without the written permission from Grantee. Special conditions may exist for stream crossings.
4. In the event of erosion, rutting or other loss of cover over Grantee's pipeline or within Grantee's Permanent Easement Area caused by activities of the Grantor, its successors, heirs, and assigns or other third party, including without limitation reductions in cover due to operation of all-terrain vehicles or other motor vehicles, the party causing the erosion shall restore cover over or around the pipeline and shall enact methods of erosion control approved by Grantee. Erosion control shall be installed, where and when necessary to prevent loss of cover over the pipeline, at no expense to Grantee.
5. No blasting shall be permitted within the Permanent Easement Area. When blasting operations are to be conducted within the vicinity of the Permanent Easement Area, prior notification shall be given to Grantee no less than five (5) business days in advance by calling the number referenced in in Section 1.
6. During construction and/or maintenance on the Permanent Easement Area, wheel loads and/or track loads (one-half of single axle load or one-half of tandem axle load) shall not exceed sixteen thousand (16,000) pounds without express prior written approval by Grantee. Notification to 811 or www.kentucky811.org is required for excavation as defined by under KRS 367.4901 to 367.4917.
7. Installation of shoring and bracing on trench side walls, where necessary, shall be used by excavators to prevent caving and to limit the trench width to a maximum of ten (10) feet across the Permanent Easement Area. Any plans to support suspended pipelines must be approved by Grantee.
8. If directional drilling is used to install facilities within the vicinity of the Permanent Easement Area, the pipelines shall be exposed with sufficient visual area so that it can be assured that the drilling operations do not impact Grantee's pipelines.
9. All roads, foreign lines, and utilities should cross the Permanent Easement Area as close to ninety (90) degrees as practical and at an acute angle of no less than seventy-five (75) degrees unless express prior written approval is obtained from Grantee.
10. One (1) foot minimum and two (2) feet preferred clearance is required between LG&E's pipeline and the Permanent Easement Area and all foreign facilities.
11. Any metallic foreign line laid within the Permanent Easement Area shall have a dielectric coating, expressly approved in writing by the Grantee's representative, to protect the integrity of the cathodic protection on Grantee's facilities. The coated portion of foreign pipe shall extend across the width of the Permanent Easement Area, unless less coating is expressly approved in writing by Grantee's representative. Grantee may require that foreign line crossings be installed inside of a casing. Grantee may further require that such casing be manufactured of a dielectric material. The requirements set forth in this paragraph are minimum standards and Grantee may impose additional requirements as are necessary to maintain safety and the integrity of pipelines.
12. Backfill between a foreign pipeline within the Permanent Easement Area shall be hand-placed and compacted to 95% of the maximum density at optimum moisture content as determined by AASHTO99 to prevent sagging from settlement. During backfilling, Grantee's pipelines shall be shielded to avoid damaging the pipe coating or the surface of bare steel pipelines.
13. Joints in the foreign line shall not be located directly over or under Grantee's pipelines to prevent possible settlement damage to joints, and provide for future maintenance of both facilities.

Pipeline markers are in in-ground test stations are required per Department of Transportation regulations and shall not be removed or altered under any circumstances without Grantee's express prior written approval.



LEGEND:

	PROPERTY LINE
	ADJOINER PROPERTY LINE
	CENTERLINE OF PIPELINE EASEMENT
	PERMANENT EASEMENT
	TEMPORARY WORKSPACE
	EXISTING EKPC EASEMENT
	INTERIOR LOT LINE

- GENERAL NOTES:**
- THE PURPOSE OF THIS PLAN IS TO SHOW THE LIMITS OF THE PERMANENT AND TEMPORARY EASEMENTS CROSSING THE SUBJECT PROPERTY. THE PROPERTY LINES SHOWN HEREON, ARE BASED ON RECORD DEEDS, COUNTY GIS DATA AND LIMITED FIELD EVIDENCE. PROPERTY LINES SHOWN HEREON ARE NOT THE RESULT OF A COMPREHENSIVE BOUNDARY SURVEY AND THE RESULTS ARE SUBJECT TO THE SAME.
 - THE INFORMATION SHOWN HEREON IS AN ILLUSTRATION OF THE APPARENT PROPERTY LINES IN RELATION TO THE EASEMENTS AND WAS DEVELOPED FOR THE SOLE PURPOSE OF RIGHT-OF-WAY ACQUISITION. IT SHOULD NOT BE RELIED UPON TO CONSTRUCT FENCES, STRUCTURES, OR USED TO CONVEY ANYTHING EXCEPT THE EASEMENTS SHOWN HEREON.
 - THIS PLAN AND ALL WORK ASSOCIATED WITH IT WAS PERFORMED BY ENCOMPASS ENERGY SERVICES, LLC & EN ENGINEERING INC., PURSUANT TO A PROFESSIONAL SERVICES CONTRACT BETWEEN EN ENGINEERING INC. AND LOUISVILLE GAS & ELECTRIC, INC.
 - BEARINGS SHOWN HEREON ARE BASED ON NAD 83 KENTUCKY STATE PLANE NORTH, U.S. SURVEY FEET. DISTANCES SHOWN ARE GRID DISTANCES - APPLY APPROPRIATE SCALE FACTOR TO CONVERT TO GROUND DISTANCES.
 - THIS PLAN IS THE RESULT OF FIELD SURVEY CONDUCTED BY ENCOMPASS ENERGY SERVICES, LLC. DURING 2017.
 - CORNER TIES WITH "±" REFERENCE, ARE APPROXIMATE SCALED DISTANCES.

TOTAL PIPE LENGTH = 3,886 ±					
AREAS		EASEMENT (EXISTING & NEW) WIDTH ACRES		AREA USED FOR CONSTRUCTION WIDTH ACRES	
	EXISTING EKPC PERMANENT EASEMENT	100'	N/A		
	LG&E TEMP. WORKSPACE WITHIN EKPC PERM. EASEMENT			50'	2.24
	LG&E PERMANENT EASEMENT	50'	4.46	50'	4.46
	LG&E TEMP. WORKSPACE OUTSIDE OF EKPC PERM. EASEMENT			25'	0.40
TOTAL			4.46		7.10

A PPL Company

Rev. 3
LGE-BC-PP-39

BULLITT CO. PIPELINE CROSSING PROPERTY OF: ISAAC W. BERNHEIM FOUNDATION BULLITT COUNTY, KENTUCKY EXHIBIT "A"

Op. Area:	KENTUCKY	Co./Par.:	BULLITT
Section:	N/A	Township:	N/A
Dft:	RCC	Date:	10/26/18
Chk:	BJP	Date:	10/26/18
Appr:	MDW	Date:	10/26/18

encompass

14 MAINE STREET, STE. 308
BRUNSWICK, ME 04011
TEL. 207.406.4681

Engineering

28100 TORCH PARKWAY
WARRENVILLE, IL 60555
TEL. 630.363.4000

EXHIBIT G

**APRIL 8, 2019
LETTER AND
ENCLOSURES**



PPL companies

Via Email and Regular Mail

Mr. Mark Wourms
Executive Director
Bernheim
2075 Clermont Road
Clermont, KY 40110

April 8, 2019

LG&E's Proposed Bullitt County Natural Gas Pipeline

Dear Mr. Wourms:

I am writing to follow up on Louisville Gas and Electric Company's ("LG&E") communications with the Isaac W. Bernheim Foundation ("Bernheim") and Kentucky Heritage Land Conservation Fund Board ("KHLCF") concerning LG&E's planned natural-gas pipeline in Bullitt County. We have not yet heard from Bernheim or KHLCF in response to my March 18, 2019 letter requesting an opportunity to meet with Bernheim and KHLCF to discuss the project (I attached the complete letter to this follow-up letter). Based on your statements in the WDRB News story noting Bernheim is not trying to fight LG&E but is instead trying to help LG&E see that there are alternatives, we are hopeful a meeting can be scheduled very soon. As noted in my March 18 letter, we want to listen and understand Bernheim's and KHLCF's concerns and meaningfully engage with each other to find a resolution. Therefore, we again request the opportunity to meet with representatives from Bernheim and KHLCF this week or next week. We will make ourselves available in the day or evening to suit your schedules. I'd appreciate a call or email with your response. Also, please let me know if there is any additional information Bernheim and KHLCF would like to review in anticipation of the requested meeting. Thank you.

Sincerely,

A handwritten signature in blue ink that reads "Cheryl Bruner".

Cheryl Bruner

LG&E and KU

Operating Services &
Corporate Security
820 West Broadway
Louisville, KY 40202
www.lge-ku.com

Cheryl Bruner
Director
T 502-627-3945
F 502-627-4881
Cheryl.Bruner@lge-ku.com



PPL companies

Enclosures: March 18th letter; Deed of Easement and exhibits

Cc: Mr. Zeb Weese, Executive Director Office of Kentucky Nature Preserve
Kentucky Heritage Land Conservation Fund, Board Members
Isaac W. Bernheim Foundation, Board of Trustees

DEED OF EASEMENT

This DEED OF EASEMENT made and entered into on this the _____ day of _____, 20____, by and between the undersigned, **ISAAC W. BERNHEIM FOUNDATION**, a Kentucky corporation, with a mailing address of 2499 Clermont Road, Clermont, Kentucky 40110 Tax Parcel ID# 065-000-00-005 and 065-000-00-030A, Grantor, and **LOUISVILLE GAS and ELECTRIC COMPANY**, a Kentucky corporation, having its principal office and place of business at 220 West Main Street, Louisville, Kentucky 40202, Grantee.

WITNESSETH:

That for and in consideration of Ten dollars (\$10) and other consideration, the receipt of which is hereby acknowledged, the Grantor does hereby grant and convey unto the Grantee, its successors, assigns, and lessees, the right, power and privilege to construct, inspect, maintain, operate, enlarge, rebuild and repair one or more pipelines for the transmission and distribution of gas, and all appurtenances thereto, (including, without limitation, an electric service line), along and upon the permanent easement and right-of-way hereinafter described (the "Permanent Easement Area") together with the right of ingress and egress over the lands of the undersigned to and from said line or lines in the exercise of the rights and privileges herein granted; provided, however, that in exercising such rights of ingress and egress, the Grantee will, whenever practicable to do so, use regularly established highways, farm roads or other roadways upon such lands.

In addition Grantor does hereby grant and convey unto the Grantee, its successors, assigns, and lessees, the right, power and privilege to use the temporary easement hereinafter described (the "Temporary Easement") for activities relating to the construction of pipelines within the Permanent Easement Area, including, without limitation, storage and staging of equipment and materials. Such Temporary Easement shall terminate and automatically revert to the Grantor upon completion of the construction of the gas pipeline or pipelines in the Permanent Easement Area.

Grantor grants to Grantee the further right to cut, trim and remove any and all trees located upon the Permanent Easement Area and also the right to cut, trim and remove vegetation and all other obstructions and obstacles from the Permanent Easement Area.

It is further expressly understood and agreed that the Grantee will pay to the undersigned any and all damage to real and tangible personal property that may be caused by the Grantee in going upon said lands and Permanent Easement Area, except that the Grantee will not be liable for any damage for cutting, trimming and removing trees, vegetation, obstructions and obstacles in the manner and to the extent herein above specified.

Neither the granting nor termination of the easements granted under this instrument shall have the effect of limiting Grantee's rights under any other easement of record on Grantor's Property.

The Grantor, its successors, heirs or assigns, may use and enjoy the lands crossed by the easements granted herein, except, however, that such use shall not conflict with any of the rights and privileges herein granted. In particular, but not by way of limitation, no building, sign, tower, antenna, swimming pool or any other structure shall be erected or maintained along or upon the Permanent Easement Area nor shall any changes in grade be made to the lands crossed by this easement which shall interfere with the privileges and rights herein granted. Further, the activities of Grantor, its successors,

heirs, and assigns upon and within the Permanent Easement Area shall be governed by the Gas Transmission Pipeline Restrictions attached hereto as Exhibit B and incorporated herein by reference.

The Permanent Easement Area is 50 feet wide lying 25 feet on both sides of the centerline labeled as Permanent Easement on the drawing attached hereto as Exhibit A and incorporated herein by reference, insofar as the lands of the Grantor extend to 25 feet on each side of said center line and containing 4.46 acres.

The Temporary Workspace is shown by the hatched areas on Exhibit A and containing 2.64 acres.

The lands over which this easement is granted are situated in the County of Bullitt, Commonwealth of Kentucky, and were conveyed to Grantor by Simon Real Estate Holdings II, LLC on October 15, 2018 and recorded in Deed Book 0956, Page 0606, and Simon Real Estate Holdings, LLC on October 15, 2018 and recorded in Deed Book 0956, Page 0600 in the Office of the Clerk of the County Court of Bullitt County.

The Grantor does hereby release and relinquish unto the Grantee, its successors, lessees and assigns, all of its interest in and to the easement herein granted, for the uses and purposes aforesaid, and it does hereby covenant to and with the Grantee that it is seized in fee simple of the property upon which said easement lies and has good and perfect right to convey the easement as herein done and it does WARRANT GENERALLY its title for the uses and purposes of this Deed of Easement.

IN TESTIMONY WHEREOF, witness the signature(s) of Grantor(s) this ____ day of _____, 20____.

ISAAC W. BERNHEIM FOUNDATION

BY:_____

TITLE:_____

COMMONWEALTH OF KENTUCKY)

COUNTY OF BULLITT)

I, _____, a Notary Public in and for the State and County aforesaid, certify that the foregoing instrument was acknowledged before me by _____, personally known to me to be the

_____ of **ISAAC W. BERNHEIM FOUNDATION**,
appeared before me this day in person in the State and County aforesaid and acknowledged the execution
and delivery of the foregoing instrument to be the free act and deed of **ISAAC W. BERNHEIM**
FOUNDATION, and their free act and deed as such officer thereof

Witness my hand this _____ day of _____, 20____.

My Commission Expires: _____

NOTARY PUBLIC

This instrument prepared by:

James J. Dimas, Senior Corporate Attorney
LG&E and KU Services Company
220 West Main Street
Louisville, Kentucky 40202
Phone 502-627-3712

EXHIBIT B

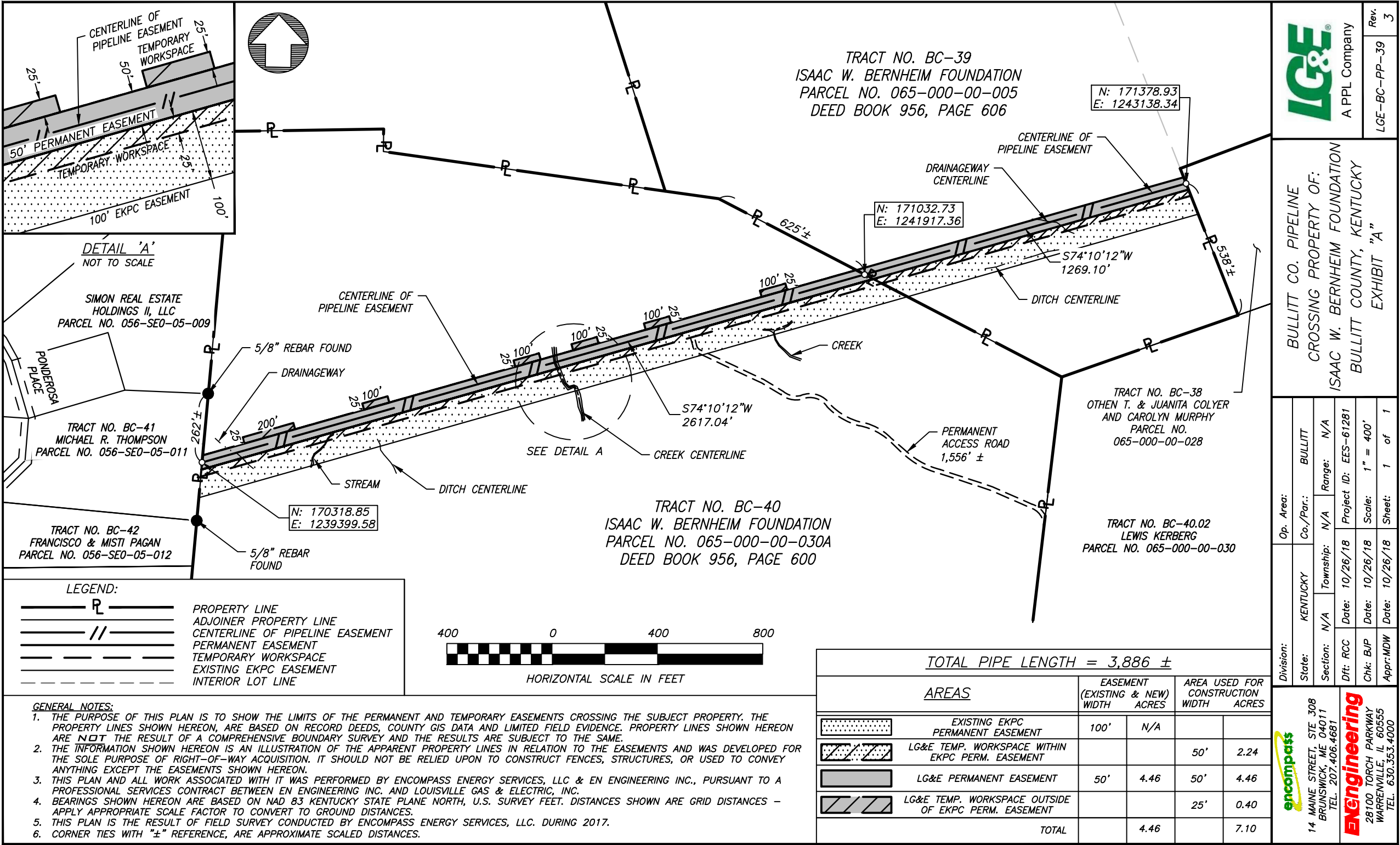
GAS TRANSMISSION PIPELINE RESTRICTIONS

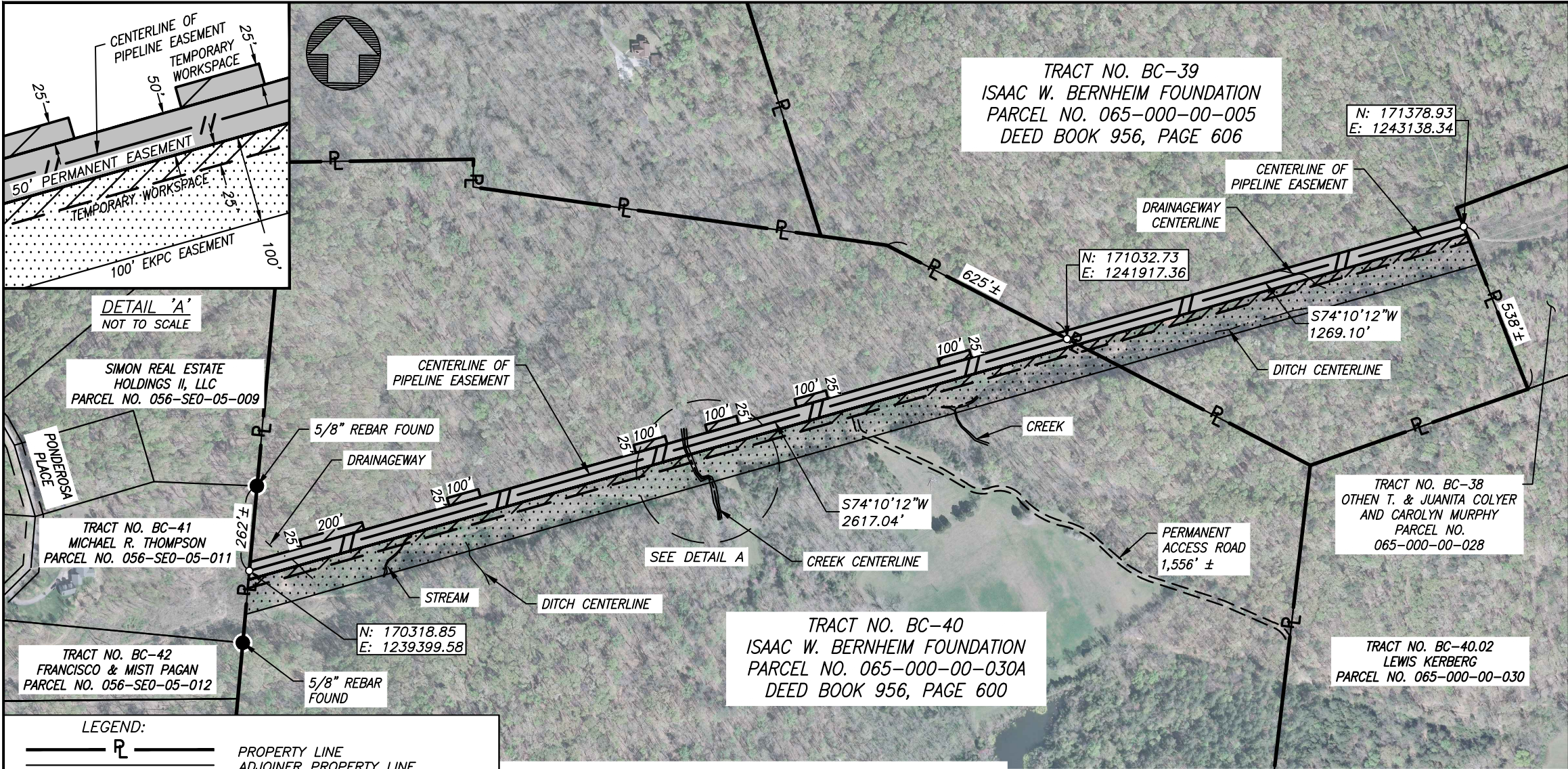
As set forth in the Deed of Easement, the activities of Grantor, its successors, heirs, and assigns upon and within the Permanent Easement Area (as defined in the Deed of Easement) are governed by the Gas Transmission Pipeline Restrictions set forth in this Exhibit.

1. Prior notification shall be given to Grantee no less than forty-eight (48) hours in advance of any construction to be performed within the Permanent Easement Area to allow Grantee the opportunity to have representation on site during construction. Please call (502) 364-8550.
2. Above and below ground obstructions (including but not limited to fire hydrants, valves, utility poles, guy wires, pad transformers, splice and pull boxes, light standards, buildings, pools, ponds, trees, drainage culverts, and shrubbery) shall not be permitted on the Permanent Easement Area without Grantee's express prior written approval. Any obstructions allowed by Grantee are subject to future removal by Grantee for purposes of pipeline maintenance or construction and Grantee shall not be liable for their replacement.

3. The depth of cover, defined as the distance from the top of pipe to grade, of Grantee's gas pipelines shall be maintained at a minimum of 36 inches, but 48 inches is preferred. Changes in grade cannot be made without the written permission from Grantee. Special conditions may exist for stream crossings.
4. In the event of erosion, rutting or other loss of cover over Grantee's pipeline or within Grantee's Permanent Easement Area caused by activities of the Grantor, its successors, heirs, and assigns or other third party, including without limitation reductions in cover due to operation of all-terrain vehicles or other motor vehicles, the party causing the erosion shall restore cover over or around the pipeline and shall enact methods of erosion control approved by Grantee. Erosion control shall be installed, where and when necessary to prevent loss of cover over the pipeline, at no expense to Grantee.
5. No blasting shall be permitted within the Permanent Easement Area. When blasting operations are to be conducted within the vicinity of the Permanent Easement Area, prior notification shall be given to Grantee no less than five (5) business days in advance by calling the number referenced in in Section 1.
6. During construction and/or maintenance on the Permanent Easement Area, wheel loads and/or track loads (one-half of single axle load or one-half of tandem axle load) shall not exceed sixteen thousand (16,000) pounds without express prior written approval by Grantee. Notification to 811 or www.kentucky811.org is required for excavation as defined by under KRS 367.4901 to 367.4917.
7. Installation of shoring and bracing on trench side walls, where necessary, shall be used by excavators to prevent caving and to limit the trench width to a maximum of ten (10) feet across the Permanent Easement Area. Any plans to support suspended pipelines must be approved by Grantee.
8. If directional drilling is used to install facilities within the vicinity of the Permanent Easement Area, the pipelines shall be exposed with sufficient visual area so that it can be assured that the drilling operations do not impact Grantee's pipelines.
9. All roads, foreign lines, and utilities should cross the Permanent Easement Area as close to ninety (90) degrees as practical and at an acute angle of no less than seventy-five (75) degrees unless express prior written approval is obtained from Grantee.
10. One (1) foot minimum and two (2) feet preferred clearance is required between LG&E's pipeline and the Permanent Easement Area and all foreign facilities.
11. Any metallic foreign line laid within the Permanent Easement Area shall have a dielectric coating, expressly approved in writing by the Grantee's representative, to protect the integrity of the cathodic protection on Grantee's facilities. The coated portion of foreign pipe shall extend across the width of the Permanent Easement Area, unless less coating is expressly approved in writing by Grantee's representative. Grantee may require that foreign line crossings be installed inside of a casing. Grantee may further require that such casing be manufactured of a dielectric material. The requirements set forth in this paragraph are minimum standards and Grantee may impose additional requirements as are necessary to maintain safety and the integrity of pipelines.
12. Backfill between a foreign pipeline within the Permanent Easement Area shall be hand-placed and compacted to 95% of the maximum density at optimum moisture content as determined by AASHTO99 to prevent sagging from settlement. During backfilling, Grantee's pipelines shall be shielded to avoid damaging the pipe coating or the surface of bare steel pipelines.
13. Joints in the foreign line shall not be located directly over or under Grantee's pipelines to prevent possible settlement damage to joints, and provide for future maintenance of both facilities.

Pipeline markers are in in-ground test stations are required per Department of Transportation regulations and shall not be removed or altered under any circumstances without Grantee's express prior written approval.





A PPL Company

Rev. 3
LGE-BC-PP-39

BULLITT CO. PIPELINE
CROSSING PROPERTY OF:
ISAAC W. BERNHEIM FOUNDATION
BULLITT COUNTY, KENTUCKY
EXHIBIT "A"

Division:	Op. Area:		Co./Par.:		Range:		Project ID:		Scale:		Sheet:	
	Kentucky	N/A	N/A	N/A	N/A	N/A	10/26/18	EES-61281	1" = 400'	1	of	1
	Dft: RCC		Date: 10/26/18		Date: 10/26/18		Date: 10/26/18		Date: 10/26/18		Date: 10/26/18	

encompass
14 MAINE STREET, STE. 308
BRUNSWICK, ME 04011
TEL: 207.406.4681
Engineering
28100 TORCH PARKWAY
WARRENVILLE, IL 60555
TEL: 630.363.4000

GENERAL NOTES:

- THE PURPOSE OF THIS PLAN IS TO SHOW THE LIMITS OF THE PERMANENT AND TEMPORARY EASEMENTS CROSSING THE SUBJECT PROPERTY. THE PROPERTY LINES SHOWN HEREON, ARE BASED ON RECORD DEEDS, COUNTY GIS DATA AND LIMITED FIELD EVIDENCE. PROPERTY LINES SHOWN HEREON ARE NOT THE RESULT OF A COMPREHENSIVE BOUNDARY SURVEY AND THE RESULTS ARE SUBJECT TO THE SAME.
- THE INFORMATION SHOWN HEREON IS AN ILLUSTRATION OF THE APPARENT PROPERTY LINES IN RELATION TO THE EASEMENTS AND WAS DEVELOPED FOR THE SOLE PURPOSE OF RIGHT-OF-WAY ACQUISITION. IT SHOULD NOT BE RELIED UPON TO CONSTRUCT FENCES, STRUCTURES, OR USED TO CONVEY ANYTHING EXCEPT THE EASEMENTS SHOWN HEREON.
- THIS PLAN AND ALL WORK ASSOCIATED WITH IT WAS PERFORMED BY ENCOMPASS ENERGY SERVICES, LLC & EN ENGINEERING INC., PURSUANT TO A PROFESSIONAL SERVICES CONTRACT BETWEEN EN ENGINEERING INC. AND LOUISVILLE GAS & ELECTRIC, INC.
- BEARINGS SHOWN HEREON ARE BASED ON NAD 83 KENTUCKY STATE PLANE NORTH, U.S. SURVEY FEET. DISTANCES SHOWN ARE GRID DISTANCES - APPLY APPROPRIATE SCALE FACTOR TO CONVERT TO GROUND DISTANCES.
- THIS PLAN IS THE RESULT OF FIELD SURVEY CONDUCTED BY ENCOMPASS ENERGY SERVICES, LLC. DURING 2017.
- CORNER TIES WITH "±" REFERENCE, ARE APPROXIMATE SCALED DISTANCES.

TOTAL PIPE LENGTH = 3,886 ±

AREAS	EASEMENT (EXISTING & NEW)		AREA USED FOR CONSTRUCTION	
	WIDTH	ACRES	WIDTH	ACRES
EXISTING EKPC PERMANENT EASEMENT	100'	N/A		
LG&E TEMP. WORKSPACE WITHIN EKPC PERM. EASEMENT			50'	2.24
LG&E PERMANENT EASEMENT	50'	4.46	50'	4.46
LG&E TEMP. WORKSPACE OUTSIDE OF EKPC PERM. EASEMENT			25'	0.40
TOTAL		4.46		7.10

EXHIBIT H

**APRIL 8 & 9, 2019
EMAIL THREAD**

Mayer, Timothy (EEC)

From: Weese, Zeb L (EEC)
Sent: Wednesday, October 30, 2019 10:41 AM
To: Mayer, Timothy (EEC)
Subject: FW: Bernheim and LG&E

From: Weese, Zeb L (EEC)
Sent: Tuesday, April 9, 2019 10:48 AM
To: 'Mark K Wourms' <mkwourms@bernheim.org>; Bruner, Cheryl <Cheryl.Bruner@lge-ku.com>
Subject: RE: Bernheim and LG&E

Hello, Cheryl and Mark,

The KHLCF Board will respond as soon as possible if it receives any correspondence from the Bernheim Board regarding the Simon Tract.

Thank you,

Zeb

Zeb Weese

Executive Director, Office of Kentucky Nature Preserves
Chairman, Kentucky Heritage Land Conservation Fund Board
Kentucky Energy and Environment Cabinet
300 Sower Blvd, 4th Floor, Frankfort, KY 40601
Office: (502)782-7837 zeb.weese@ky.gov eec.ky.gov

From: Mark K Wourms [<mailto:mkwourms@bernheim.org>]
Sent: Monday, April 8, 2019 10:29 PM
To: Bruner, Cheryl <Cheryl.Bruner@lge-ku.com>
Cc: Weese, Zeb L (EEC) <Zeb.Weese@ky.gov>
Subject: RE: Bernheim and LG&E

Cheryl, Thanks for resending the letter and easement information. I will discuss this with Bernheim's Capital Asset Committee next week and reply shortly thereafter. Best wishes.

Dr. Mark K. Wourms
Executive Director
Bernheim Arboretum and Research Forest
PO Box 130, KY 245
Clermont, KY 40110
(502) 955-8512
www.bernheim.org



From: Bruner, Cheryl [<mailto:Cheryl.Bruner@lge-ku.com>]

Sent: Monday, April 8, 2019 4:40 PM

To: Mark K Wourms <mkwourms@bernheim.org>

Cc: 'Weese, Zeb L (EEC)' <Zeb.Weese@ky.gov>

Subject: Bernheim and LG&E

Dear Mark and Zeb,

Good afternoon. Please see the attached letter. It is being sent regular mail as well.

Kind regards,

Cheryl

Cheryl E. Bruner

Director, Operating Services & Corporate Security | LG&E and KU Energy LLC

820 West Broadway, Louisville, KY 40202

O: 502-627-3945 | **F:** 502-627-4881

lge-ku.com

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EXHIBIT I

***CRAIN v. HARDIN
COUNTY WATER
DISTRICT No. 2***

2016 WL 3453206

Only the Westlaw citation is currently available.

Unpublished opinion. See KY ST
RCP Rule 76.28(4) before citing.

NOT TO BE PUBLISHED
Court of Appeals of Kentucky.

Norman Taylor Crain; and
Mona Gail Crain, Appellants

v.

[Hardin County Water District No. 2](#); and Purchase
of Agricultural Conservation Easement, Appellees

NO. 2015–CA–000499–MR

JUNE 17, 2016; 10:00 A.M.

Discretionary Review Denied by
Supreme Court December 8, 2016

APPEAL FROM HARDIN CIRCUIT COURT,
HONORABLE KELLY MARK EASTON, JUDGE,
ACTION NO. 14–CI–01242

Attorneys and Law Firms

BRIEF FOR APPELLANTS: [Dwight Preston](#),
Elizabethtown, Kentucky

BRIEF FOR APPELLEES: [David T. Royse](#), [Damon R. Talley](#),
Lexington, Kentucky

BEFORE: [COMBS](#), [D. LAMBERT](#), AND MAZE, JUDGES.

OPINION

[MAZE](#), JUDGE:

*1 Norman and Mona Crain (collectively, the Crains) appeal from an interlocutory judgment of the Hardin Circuit Court finding that the Hardin County Water District No. 2 (the District) is authorized to take possession of an easement across their property. The Crains argue that the condemnation is barred because the District failed to negotiate in good faith prior to bringing the petition, and because the taking is prohibited based on an agricultural conservation easement which they previously conveyed to the Commonwealth. The

trial court's finding that the District negotiated in good faith was supported by substantial evidence and will not be disturbed on appeal. Furthermore, the District's proposed use of the easement is not prohibited under either the terms of the agricultural conservation easement or the prior public use doctrine. Hence, we affirm.

The facts of this appeal are not in dispute. The Crains own a 270-acre farm in an area situated to the north of Glendale in Hardin County. The Crain family has maintained this farm for generations. In 2004, the Crains conveyed an agricultural conservation easement to the Purchase of Agricultural Conservation Easement (PACE) Corporation, which is administratively part of the Kentucky Department of Agriculture. The easement committed the Crains and their successors to maintain the farm for agricultural, forest, or conservation purposes.

Glendale is an unincorporated area with a population of fewer than two thousand residents. The proximity of the CSX railroad line and a nearby interchange with Interstate 65 resulted in the creation of a property known as the Glendale Mega Site (the Mega Site), a parcel of more than 1,500 acres located to the southeast of Glendale. The Mega Site has been set aside for future industrial development. Since neither Glendale nor the Mega Site has a sewer system, the District decided to proceed with the Nolin River Watershed Wastewater Project. The plan involves gravity and forced main lines, with eventual connection to an existing system maintained by the City of Elizabethtown.

The area of the project involved in this dispute is a forced line segment of the sewer project along the CSX railroad line to the north of Glendale. On the east side of the railroad is a farm property owned by a Mr. Wheeler. The Crains' farm is located on the west side. Engineers rejected the use of the railroad property itself due to the challenges presented by placing a line within that property. The Wheeler property also presented engineering difficulties, and Wheeler asked for more money than the District was willing to pay.

Consequently, the District decided to proceed with plans for the sewer line on the Crains' side of the railroad line. In June 2013, a representative of the District, Jeff Gaddie, had a discussion with Norman Crain about the line. He prepared a list of conditions, which included a ten-year renewable lease at a rent of \$10 per linear foot. The District agreed to most of the Crains' conditions, but it counteroffered to pay \$2 per linear foot for an easement, for a total payment of \$8,000. The

District based this counteroffer on a policy used by another local water district. The District's letter concluded with the following language, "I hope that we can reach a mutually beneficial agreement that will result in the advancement of this very important project. Please feel free to contact me or any Water District staff member with any questions you may have."

*2 The Crains did not formally respond to the counteroffer, but further negotiations followed. In light of the agricultural easement, the District agreed to remove a planned pump station off the Crains' property. The District also agreed not to place any air release valves or any above-ground facilities on the Crain property. On March 24, 2014, and again on April 2, 2014, the District's attorney, Damon Talley, met with Norman Crain. At the first of these meetings, Crain agreed to have the District's appraiser perform an appraisal. Furthermore, the two agreed that a specific survey would be conducted to identify the areas needed for the sewer line.

At the second meeting, Crain made three alternative proposals. The first was to stay off of the property entirely. The second was to use only a portion of his property. Under this proposal, Crain stated that he would accept a payment of \$2 per linear foot. And in his third alternative, Crain agreed to accept a payment of \$12 per linear foot for the entire area sought by the District. Upon review, the District concluded that it would require the entire area. In a letter dated May 21, 2014, Talley renewed the District's offer of \$2 per linear foot. However, Talley indicated that the District was willing to consider another counterproposal. In addition, Talley asked Crain if he would accept a payment of \$10,000 rather than the \$8,000 set out in the previous offer. Crain indicated that he would not accept that amount.

By letter dated June 15, 2014, Crain sent an estimate for the cost of fencing off the easement. The District immediately responded that it was willing to pay the expense of \$12,000 for the fencing, bringing the total amount to \$20,000. However, the parties agreed that the fencing was a separate issue from the easement compensation. Nevertheless, the Crains refused to accept the District's offer.

The appraisal performed pursuant to [KRS](#) ¹ [416.580](#) resulted in a valuation in the amount of \$46,927 for the easements, both permanent and temporary. However, neither party has agreed with this amount. Consequently, on July 21, 2014, the District brought this petition seeking to obtain the easements through a condemnation action pursuant to [KRS](#)

[416.550–416.670](#). In addition to naming the Crains, the District also named the PACE Corporation, as owner of the agricultural conservation easement. PACE did not challenge the District's right to take, but stated that any easement granted to the District would be secondary to its easement.

The Crains, on the other hand, challenged the District's right to take. In particular, they argued that the District had failed to negotiate in good faith prior to bringing the condemnation petition. The Crains also contended that the agricultural conservation easement precluded the District from condemning any portion of the property for non-agricultural purposes. The trial court conducted a hearing on these issues on November 24, 2014, at which the testimony of several witnesses was presented and multiple exhibits were filed. The parties also filed post-hearing briefs on the issues.

On February 6, 2015, the trial court issued findings of fact, conclusions of law and an order concluding that the District acted in good faith during its negotiations with the Crains. The trial court further found that the agricultural conservation easement did not preclude a taking by eminent domain, although the District's easement would be secondary to the interest held by the PACE Corporation. However, the PACE Corporation has not objected to the proposed easement in this case. The trial court noted that the United States Department of Agriculture (USDA) has a right to enforce the easement if PACE fails to do so. But the trial court also found that the Crains do not have standing to assert that position on behalf of the federal government. Nevertheless, the trial court directed the District to serve a copy of the United States Secretary of Agriculture in order to permit the USDA to intervene in this action if it desired.

*3 Following that service, the USDA filed a response advising the trial court that it did not intend to exercise its contingent right to enforce the easement in this matter. The USDA also advised the court that it was not asserting any position on the condemnation petition, or any claim to the condemnation proceeds. Based on this response, the trial court entered an interlocutory judgment on March 13, 2015, finding that the District is entitled to take possession of the easement. The Crains exercised their right to appeal from this judgment pursuant to [Ratliff v. Caldwell County](#), 617 S.W.2d 36, 39 (Ky. 1981).

As this matter was tried before the circuit court without a jury, our review of factual determinations is under the clearly erroneous rule. [CR](#) ² [52.01](#). A finding of fact is not clearly

erroneous if it is supported by substantial evidence, which is “evidence of substance and relevant consequence having the fitness to induce conviction in the minds of reasonable men.” *Owens–Corning Fiberglas Corp. v. Golightly*, 976 S.W.2d 409, 414 (Ky. 1998). It is within the province of the trial court as the fact-finder to determine the credibility of the witnesses and the weight given to the evidence. *Frances v. Frances*, 266 S.W.3d 754, 756 (Ky. 2008). However, the interpretation of the scope of the conservation easement is an issue of law, which we review *de novo*. *Carroll v. Meredith*, 59 S.W.3d 484, 489 (Ky. App. 2001).

The Crains first argue that the trial court erred in finding that the District negotiated in good faith prior to bringing the condemnation petition. As the trial court recognized, Kentucky courts have also imposed this duty on the condemnor in addition to the constitutional and statutory requirements for eminent domain. *God's Ctr. Found., Inc. v. Lexington Fayette Urban Cty. Gov't*, 125 S.W.3d 295, 300 (Ky. App. 2002). A condemnor's failure to negotiate in good faith may serve as a basis for dismissal of the condemnation action. *Eaton Asphalt Paving Co., Inc. v. CSX Transportation, Inc.*, 8 S.W.3d 878, 883 (Ky. App. 1999).

The Crains note that the District did not independently research the value of the easement. By its own admission, the District relied on the Hardin County Water District's policy of paying \$2 per linear foot for the easement sought. The Crains also point out that the District never wavered from its initial offer based on this calculation, even though the width of the easements sought increased. The Crains also complain that the District refused to consider alternative routes which would not have required the easement to pass over their property. Based upon this conduct, the Crains contend that the District failed to demonstrate that it negotiated in good faith.

However, the inquiry in such cases is whether the condemnor made a reasonable effort in good faith to acquire the land by private sale at a reasonable price. *Usher & Gardner, Inc. v. Mayfield Indep. Bd. of Ed.*, 461 S.W.2d 560, 562 (Ky. 1970). A single take-it-or-leave-it offer of a manifestly inadequate amount may be evidence showing a failure to make a reasonable effort to acquire the land by contract of private sale. *Id.* at 562–63. On the other hand, the condemning authority is not required to haggle in order to satisfy its obligation to demonstrate good faith in negotiating the purchase of property. *Coke v. Commonwealth, Dep't. of Finance*, 502 S.W.2d 57 (Ky. 1973). Furthermore, specific details regarding the design, problems of necessity,

convenience to public, and saving of expense are left to the sound discretion of the condemning authority. *Sturgill v. Commonwealth, Dep't. of Highways*, 384 S.W.2d 89, 91 (Ky. 1964).

*4 As the trial court found, the District's lack of experience in negotiating the purchase of easements demonstrates neither bad faith nor the lack of good faith. The Crains also argue that the District could not have made a good-faith offer without first obtaining an appraisal of the property. However, there is no statutory requirement that a condemnor obtain an appraisal prior to bringing the condemnation petition. See *Milam v. Viking Energy Holdings, LLC*, 370 S.W.3d 530, 536 (Ky. App. 2012). See also *Vincent v. City of Powderly*, No.2002–CA–001315–MR, 2003 WL 22025850, at *1 (Ky. App. 2003).

Moreover, the trial court specifically found that the District made a good-faith effort to negotiate with the Crains. Although the District maintained its offer of \$2 per linear foot, the District repeatedly asked the Crains to make a counteroffer. The District engaged the Crains in negotiations for nearly a year over these matters. The District also agreed to remove any above-ground facilities from the Crain property and indicated a willingness to pay for fencing the easement apart from the compensation for the easement itself. Finally, the trial court found that the District set forth sound reasons for its decision to locate the easement on the Crains' side of the railroad line. Under the circumstances, we agree with the trial court that the District did not act in bad faith during its negotiations to purchase the easement.

The Crains next argue that the agricultural conservation easement precludes any taking for a non-agricultural purpose. An agricultural conservation easement is “an interest in land, less than fee simple, which represents the right to restrict or prevent the development or improvement of the land for purposes other than agricultural production.” KRS 262.900(1)(a). Under the provisions of KRS 262.900 *et seq.*, the Commonwealth is authorized to purchase such easements, KRS 262.904, and the PACE Corporation was established to administer and hold title to the easements. KRS 262.906. The PACE Corporation is an independent, municipal corporation attached to the Kentucky Department of Agriculture for administrative purposes. KRS 262.906(1). Since the PACE Corporation receives funds under the Conservation Security and Farm Lands Protection Program, the USDA has a contingent right to enforce the easement if the PACE Corporation fails to do so. 16 U.S.C. ³ § 3838c.

The Crains note that [KRS 262.910\(2\)\(d\)](#) prohibits the Commonwealth from locating “landfills, sewage treatment plants, or other public service facilities that are not compatible with or complimentary to agricultural production on restricted lands.” However, the Commonwealth is permitted to grant rights of way through restricted land “for the installation of, transportation of, or use of, lines for water, sewage, electric, telephone, gas, oil or oil products...” [KRS 262.910\(4\)\(e\)](#). The proposed use of the easement for a sewer line is clearly permitted under the terms of the statute.

In the alternative, the Crains argue that the condemnation is prohibited by the prior public use doctrine. The doctrine provides that land devoted to a public use may not be taken for another public use under the power of eminent domain. [Kipling v. City of White Plains](#), 80 S.W.3d 776 (Ky. App. 2001). The Crains contend that, when they conveyed the agricultural conservation easement to the PACE Corporation, they turned over an interest in the property to the Commonwealth for a public use. Since that interest is dedicated to a prior public use, the Crains argue that the District is precluded from condemning an interest for a different public use.

*5 We disagree. *Kipling* involved property subject to an agricultural conservation district rather than the agricultural conservation easement at issue in this case. But the agricultural conservation district also served to protect agricultural land from development. The Kiplings, like the Crains in this case, argued that once an agricultural district has been created, the land within it is no longer mere private property, but land which has been set aside for a public purpose. This Court disagreed, holding,

There is little doubt that the public does benefit when agricultural districts are created because they contribute to “the production of food and other agricultural products.” [KRS 262.850\(2\)](#). However, for purposes of condemnation and eminent domain, the fact that the public receives some sort of benefit from a certain use of land does not mean that the land is being used for a public purpose. *See City of Owensboro v. McCormick*, Ky., 581 S.W.2d 3 (1979) (holding that public benefit is not the equivalent of public use).

The Kiplings chose to have their property declared an agricultural district. In doing so, they did not hold their land open to the public for a public use, nor did they turn it over to the state for a public use. Thus, the doctrine of prior public use does not apply.

Id. at 784–85.

The Crains contend that *Kipling* is distinguishable because they conveyed an easement to the PACE Corporation. Unlike an agricultural conservation district, an easement is a privilege or an interest in land upon the dominant tenement to enjoy a right to enter the servient tenement. [Sawyers v. Beller](#), 384 S.W.3d 107, 111 (Ky. 2012). Since the Commonwealth, through the PACE Corporation, already owns an interest in their property, they assert that this interest constitutes a dedication to a prior public use.

However, the focus in *Kipling* was not on the nature of the restriction upon or interest in the property, but on the distinction between a “public purpose” and a “public use.” Under the terms of the agricultural conservation easement, neither the Commonwealth nor the public is granted a right to come onto the Crains' property. Rather, the Commonwealth simply obtained the right to restrict certain future development of the property. While this is clearly a public purpose, we agree with the trial court that it does not constitute a prior public use of the property. Therefore, the trial court did not err in allowing the District's condemnation petition to proceed.

Accordingly, the interlocutory judgment of the Hardin Circuit Court is affirmed, and this matter is remanded for additional proceedings under [KRS 416.440 et seq.](#) regarding the Crains' compensation for the easement.

ALL CONCUR.

All Citations

Not Reported in S.W.3d, 2016 WL 3453206

Footnotes

- 1 Kentucky Revised Statutes.
- 2 Kentucky Rules of Civil Procedure.
- 3 United States Code.

End of Document

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EXHIBIT J

CRAIN v. HARDIN COUNTY WATER DISTRICT No. 2

KDA PACE ANSWER

DUTY

COMMONWEALTH OF KENTUCKY
HARDIN CIRCUIT COURT
CIVIL ACTION NO. 14-CI-1242

HARDIN COUNTY WATER DISTRICT No. 2

v.

ANSWER

NORMAN TAYLOR CRAIN, PACE CORPORATION

FILED

2-14-13 10 13

HARDIN C.
LORETT

DEFENDANTS

Comes the Defendant, the Kentucky Department of Agriculture ("KDA"), Purchase of Agricultural Conservation Easement (PACE) Corporation, by counsel, and for its Answer to the Petition filed against it by the Hardin County Water District No. 2, states as follows:

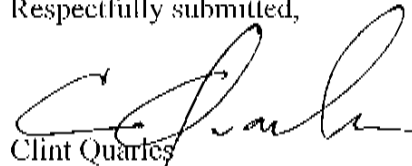
1. That the KDA PACE Corporation holds a valid conservation easement filed March 12, 2004 in Hardin County, deed book 1111 page 491 on the property described in the petition.

2. KDA PACE Corporation does not dispute the statements in the entirety of the Petition.

3. KDA PACE Corporation value in the held easement is the potential development value. As this value is distinct from the harm caused by the proposed project, the PACE corporation is not entitled to compensation.

4. The easement sought by the Plaintiff shall be secondary to the KDA PACE easement.

Respectfully submitted,



Clint Quarles
Kentucky Department of Agriculture
500 Mero Street, 7th Floor
Frankfort, KY 40601
(502) 564-1155
Clint.quarles@ky.gov

CERTIFICATE OF SERVICE

This does certify that a true and accurate copy of the foregoing Answer was transmitted via regular United States mail, postage prepaid, to the following:

David T. Royse
Monica H. Braun
STOLL KEENON OGDEN PLLC
399 West Vine St., Suite 2100
Lexington, KY 40507

Damon R. Talley
DAMON R. TALLEY, P.S.C.
P.O. Box 150
Hodgenville, KY 42748

Dwight Preston
LEWIS & PRESTON
102 West Dixie Avenue
Elizabethtown, KY 42701

This 26th day of August, 2014.

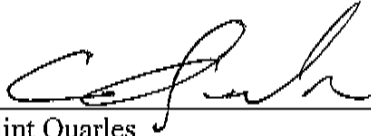

Clint Quarles

EXHIBIT K

***PORTER v.
SHELBYVILLE
CEMETERY Co.***

2008 WL 4822525

Only the Westlaw citation is currently available.

Unpublished opinion. See KY ST
RCP Rule 76.28(4) before citing.

NOT TO BE PUBLISHED
Court of Appeals of Kentucky.

William PORTER and Barbara Porter, Appellants

v.

SHELBYVILLE CEMETERY COMPANY a/
k/a Grove Hill Cemetery Company, Appellee.

No. 2007-CA-002390-MR.

|
Nov. 7, 2008.

|
Rehearing Denied Jan. 14, 2009.

|
Discretionary Review Denied by
Supreme Court June 17, 2009.

Appeal from Shelby Circuit Court, Action No. 05-CI-00264;
Charles R. Hickman, Judge.

Attorneys and Law Firms

Alan N. Linker, Louisville, KY, Donald T. Prather,
Shelbyville, KY, Raymond R. Roelandt, Crestwood, KY, for
appellant.

C. Gilmore Dutton, III, Shelbyville, KY, for appellee.

Before LAMBERT and NICKELL, Judges; HENRY,¹
Senior Judge.

OPINION

LAMBERT, Judge.

*1 William and Barbara Porter (hereinafter “the Porters”) appeal from a denial of their motion to alter, amend, or vacate both the findings of fact, conclusions of law and judgment of the Shelby Circuit Court and the interlocutory order and judgment of the Shelby Circuit Court, allowing Shelbyville Cemetery Company d/b/a Grove Hill Cemetery (hereinafter “Grove Hill”) to condemn thirteen acres of property under [KRS 416.210](#). After careful review, we affirm the court below.

Grove Hill was originally established on the east side of Old Mt. Eden Road in Shelby County, Kentucky. The original forty-two acres of the cemetery have been fully developed and all available land appropriate for burial has been utilized. In 1984, the Grove Hill Board of Trustees (hereinafter “the Board”) made a decision that the survival of the cemetery required development on the west side of Old Mt. Eden Road. With this in mind, the Board purchased thirteen acres from Edgar Vaughan on the west side of Old Mt. Eden Road, but only eight and a half acres are suitable for grave sites. In 2002, Grove Hill acquired an additional ten acres composed of three small tracts of land adjacent to the established cemetery on the east side of Old Mt. Eden Road. Of the ten acres, eight are usable for burial sites and have platted development.

The Board of Grove Hill is obligated to maintain an affordable and viable cemetery to the public and must maintain a perpetual care fund equaling not less than 20% of revenues generated from the sale of burial plots. See [KRS 367.952](#). Since 1980, Grove Hill has accumulated \$560,000 in its perpetual care fund, and its maintenance and financial obligations are in excess of \$125,000 per year. In order to maintain the grave sites that have already been developed, the cemetery will need an additional \$2.4 million dollars in its perpetual care fund. To remain economically viable and to build its endowment, Grove Hill has to increase sales and develop additional burial sites.

In 1993 the Porters acquired approximately twenty-six acres on the west side of Old Mt. Eden Road, directly across from the original and primary entrance of Grove Hill. Barbara Porter became a member of the Board of Grove Hill and continued to be a member until removed during this conflict. Sitting between the Porters' property and the thirteen acres Grove Hill acquired in 1984 from Edgar Vaughan is the undeveloped thirteen acre tract of land, originally owned by Frank Vaughan, (hereinafter “the Vaughan Property”) subject to this condemnation action.

In early December 2004 Frank Vaughan sent a letter to Charles Long, President of Grove Hill, stating that he planned to sell the Vaughan Property and would be accepting offers. After several phone conversations regarding the purchase, Frank informed Long that he had given the Porters the right of first refusal on the Vaughan Property and now intended to sell it to them. On December 15, 2004, the Vaughan Property was sold to the Porters.

*2 On January, 14, 2005, after being notified by the Board that Grove Hill was interested in acquiring the Vaughan Property by any means necessary, the Porters sent a letter to Grove Hill's counsel stating that the Porters "have an executed contract for the purchase of [the Vaughan Property] and it is not for sale." On February 21, 2005, counsel for Grove Hill sent letters to the Porters' counsel requesting that the parties meet to discuss a resolution of this matter.

On March 1, 2005, the Porters closed on the Vaughan Property. As a result of the Porters' refusal to negotiate a resolution of this matter, Grove Hill filed a condemnation action pursuant to KRS 416.210 in Shelby Circuit Court on May 4, 2005.

On May 27, 2005, the Porters filed a motion to dismiss the petition, alleging that Grove Hill had failed to negotiate in good faith and that its petition was not brought under the name of the real party in interest, the Shelbyville Cemetery Corporation. On August 1, 2005, the Shelby Circuit Court overruled the motion, finding that Grove Hill had satisfied its obligation to negotiate in good faith. Additionally, Grove Hill filed a motion to amend its petition to reflect the legal name of Grove Hill, Shelbyville Cemetery Corporation. Grove Hill simultaneously filed a motion for interlocutory judgment premised on the argument that the Porters were estopped from raising affirmative defenses because Barbara Porter, as a member of the Board of Grove Hill, had breached her fiduciary duty. On October 13, 2005, the Shelby Circuit Court granted Grove Hill leave to file an amended petition reflecting their legal name. On November 3, 2005, the Porters filed their response to Grove Hill's amended petition, asserting the affirmative defenses of failure to negotiate in good faith and lack of necessity.

On August 3, 2006, Grove Hill moved the Shelby Circuit Court for summary judgment. On September 19, 2006, the Porters filed a motion requesting that Grove Hill be required to hold elections for trustees and to obtain approval of the Shelby County Fiscal Court prior to continuing with its condemnation proceeding pursuant to the new amendments to KRS 416.210. On November 20, 2006, both motions were overruled. In its ruling, the trial court held that material issues of fact existed as to the issue of necessity; that the substantive amendments to KRS 416.210 would not apply retroactively; and that, since the Porters did not seek to invalidate Grove Hill's decision to condemn, the demand for the election of trustees was more properly dealt with in a separate action.

Prior to the hearing in this matter, both parties filed motions *in limine* to exclude the testimony of the other party's expert witness. The court overruled both motions, finding that each proposed expert was qualified to testify and that the testimony would assist the fact finder in understanding the evidence and facts at issue.

A bench trial was held April 26 and 27, 2007. On June 26, 2007, the trial court entered its findings of fact, conclusions of law and judgment, which found that Grove Hill had met its burden of proof in establishing the need to condemn the Vaughan Property. On June 28, 2007, the court entered an interlocutory order and judgment granting Grove Hill the right to condemn the subject property.

*3 On July 6, 2007, the Porters filed a motion to alter, amend, or vacate the findings of fact, conclusions of law and judgment as well as the interlocutory order and judgment. On October 26, 2007, the Shelby Circuit Court overruled the Porters' motion, and this appeal followed.

The Porters first argue that the trial court erred in determining that the 2006 amendment to KRS 416.210 did not apply retroactively. However, KRS 446.080(3) provides that no statute is to be applied retroactively absent an express legislative directive. See *Baker v. Fletcher*, 204 S.W.3d 589 (Ky.2006); *Kentucky Industrial Utility Customers, Inc. v. Kentucky Utilities Company*, 983 S.W.2d 493 (Ky.1998); *Hamilton v. Desparado*, 868 S.W.2d 95 (Ky.1993).

Amendments which change and redefine the out-of-court rights, obligations and duties of persons in their transactions with others are considered to be changes in substantive law and come within the rule that statutory amendments cannot be applied retroactively to events which occurred prior to the effective date of the amendment. *Benson's Inc. v. Fields*, 941 S.W.2d 473 (Ky.1997). Those amendments which apply to the in-court procedures and remedies which are used in handling pending litigation, even if the litigation results from events which occurred prior to the effective date of the amendment, do not come within the rule prohibiting

retroactive application. *Peabody Coal Co. v. Gossett*, 819 S.W.2d 33 (Ky.1991).

See *Commonwealth of Kentucky, Dept. of Agriculture v. Vinson*, 30 S.W.3d 162, 168 (Ky.2000). Although the Porters are correct in asserting that the amendment is procedural, it is not an amendment to “in-court procedure ... used in handling pending litigation.” It is rather a change to the “out-of-court rights, obligations, and duties” and is thus considered a substantive change. See *Id.*; see also *Kentucky Ins. Guar. Ass’n v. Jeffers*, 13 S.W.3d 606, 609 (Ky.2000). Therefore, we agree with the trial court that absent specific legislative intent otherwise; this amendment should not and will not be applied retroactively.

The Porters additionally argue that Grove Hill's corporate charter was revoked in 1897, and thus that the trial court erred in finding that Grove Hill had a right to bring this condemnation action or that its de facto trustees had the right to act. We disagree.

The 1850 Constitution of Kentucky permitted the General Assembly to charter corporations by way of special legislation. Grove Hill was chartered in this manner. However, the current Kentucky Constitution, adopted in 1891, specifically forbade the General Assembly from chartering corporations.

During the 1893 legislative session, the General Assembly created Kentucky's first uniform corporate code by adopting Kentucky Statutes Chapter 32. As part of these statutes, special requirements were imposed on pre-1891 corporations. Said corporations had four years to bring themselves into compliance with the statutes, under the penalty of a statutory revocation of their charters. The records of the Secretary of State do not evidence that Grove Hill ever satisfied the requirements.

*4 However, [KRS 271B.18-030](#), which was originally enacted in 1972 and is current through the 2007 legislative session, clearly states that

[a]ny corporation which was in existence at the time of the adoption of the present Constitution of this state and subsequent thereto has filed in the

office of the Secretary of State any amendment of its charter or articles of incorporation shall thereby be deemed to have filed therein an acceptance of the provisions of that Constitution.

Grove Hill filed an amendment to its articles of incorporation with the Secretary of State in March 1910. Moreover, [KRS 271B.18-020](#) establishes that

[t]he corporate existence of each domestic corporation which, upon July 1, 1974, is listed as an existing corporation on the current corporate index maintained in the office of the secretary of state and is then engaged in the usual course of its business shall be, and it hereby is, validated retroactively to the date of its incorporation and continued for the period specified in its articles of incorporation and the amendments thereto....

Grove Hill, since its incorporation, which would be at the latest in 1910 when the amendment to its articles of incorporation was filed with the Secretary of State, has been listed in the Secretary of State's corporate index and at the time of the enactment of [KRS 271B.18-020](#) was engaged in its usual course of business. Therefore, Grove Hill's corporate charter was retroactively validated, and the trial court was correct in finding that it had the right to bring this condemnation action.

As to the Porters' contention that Grove Hill lacked the authority to act because it did not elect trustees as provided in its Articles of Incorporation, we find that the trial court again did not err. Since 1959 trustees have been invited to serve on the Board instead of being elected, Barbara Porter among them. Kentucky has long recognized that trustees who are appointed rather than elected as required by a corporation's bylaws are still de facto trustees and assume the power to act in that capacity. See *Commonwealth ex. rel. Breckinridge v. Winstead*, 430 S.W.2d 647, 648 (Ky.1968); *O'Hara v.*

Williamstown Cemetery Co., 133 Ky. 828, 119 S.W. 234 (Ky.1909). Accordingly, we again find no error.

The Porters next contend that the trial court erred in determining that Grove Hill negotiated in good faith. They allege that because Grove Hill never named a monetary offer, it cannot be said that they negotiated in good faith. However, the January 14, 2005, letter from the Porters' attorney to Grove Hill's attorney made it clear that the Vaughan Property was "not for sale." Moreover, Grove Hill continued to request discussion of negotiation but was again told the Vaughan Property was not for sale on April 1, 2005. It was not until after this additional rebuff that Grove Hill filed the condemnation action on May 5, 2005. Therefore, we do not find that the trial court erred in its determination that Grove Hill tried to negotiate in good faith.

*5 The Porters also argue that the trial court improperly found that necessity existed for the taking of the Vaughan Property. We disagree.

Kentucky law is clear that "[a] determination by the condemnor that the taking is a necessity is ordinarily conclusive, but the courts will review the condemning body's exercise of discretion for arbitrariness or action in excess of its authority." See *God's Center Foundation, Inc. v. Lexington-Fayette Urban County Government*, 125 S.W.3d 295, 300 (Ky.App.2002). Also, "[t]he party challenging the condemnation ... bears the burden of establishing the lack of necessity or public use and abuse of discretion." See *id.*

It is undisputed that Grove Hill sought the property to provide burial sites for residents of Shelby County. It is also undisputed that Grove Hill needs additional land for the sale of plots so that it can continue to grow the endowment fund to ensure perpetual care of the cemetery grounds as required by KRS 367.952. In *God's Center*, this Court opined that a condemnor's determination of necessity will be respected unless the use is "palpably private or plainly without reasonable foundation." See *God's Center Foundation, Inc.*, 125 S.W.3d at 303. The Porters have failed to prove Grove Hill's use would be private or that it is without reasonable foundation. Additionally, despite the Porters' contentions, the minutes of the Board's meetings on several occasions reflect the discussion of the necessity of acquiring additional property. Therefore, we again find no error.

The Porters also appeal the trial court's admission of the testimony of Grove Hill's expert witness. We review the court's decision regarding the admissibility of expert testimony under an abuse of discretion standard. *Mill v. Eldridge*, 146 S.W.3d 909, 911 (Ky.2004).

Grove Hill's expert, Dr. Henry Moon, holds a doctorate degree in geography and land use and has extensive experience in condemnation, land use, and land use planning. The record indicates that the Porters' issue with Dr. Moon is that he has only testified in cases involving takings for construction of airports and roads, never in matters relating to a cemetery. They additionally take issue with Dr. Moon's methods in making his determination regarding Grove Hill's needs (i.e., that he used photographs rather than actually going to the site.). However, the record clearly reflects that the trial court properly considered all the *Daubert* factors in deciding on the admissibility of Dr. Moon's testimony. Dr. Moon's testimony on the highest and best use of the land was instructive to the court as to the cemetery's need for additional land and his qualifications are without defect. As such, the court did not abuse its discretion in admitting the testimony.

The Porters finally argue that the trial court erred in finding Barbara breached her fiduciary duty to Grove Hill. The trial court did not, however, issue a ruling on this issue but instead only made a passing reference to the issue in its findings of fact. It was not a determining factor of any issue we have addressed in this appeal, and therefore we decline to address it now. Additionally, as we have found that KRS 271B.18-020 retroactively validated Grove Hill's charter, the Porters' argument regarding KRS 273.2527(3) is rendered moot, and we need not address it.

*6 Accordingly, we affirm the findings of fact, conclusions of law and judgment as well as the interlocutory order and judgment of the Shelby Circuit Court.

ALL CONCUR.

All Citations

Not Reported in S.W.3d, 2008 WL 4822525

Footnotes

- 1 Senior Judge Michael L. Henry, sitting as Special Judge by assignment of the Chief Justice pursuant to [Section 110\(5\)\(b\) of the Kentucky Constitution](#) and [Kentucky Revised Statutes \(KRS\) 21.580](#).

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